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# School Act Amendments

First Nation Schools of Choice  
Model Local Education Agreement  
Indigenous Education Councils





**fnesc**

**FIRST NATIONS EDUCATION STEERING COMMITTEE**

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# Introduction |

## School Amendment Act (2023)

The *School Amendment Act, 2023* addresses a number of commitments made by the Ministry of Education and Child Care (“the Ministry”) in the *BC Tripartite Education Agreement* and in the *Declaration on the Rights of Indigenous Peoples Act Action Plan*. The First Nations Education Steering Committee (FNESC) and the Ministry co-developed these changes, and the Ministry also consulted with First Nations and Treaty First Nations. The legislative changes are aimed at improving First Nation students’ attendance and education outcomes through effective relationships and processes between First Nations and school districts. The changes in the Act begin to address the systemic barriers faced by First Nation students across BC, as well as to support all Indigenous learners, as appropriate, within the province. These important steps along the path of reconciliation will respect First Nations authority and decision-making over the education of their children and recognize local First Nations in British Columbia as hosts within their traditional territories.

The *School Amendment Act, 2023* received Royal Assent on November 8<sup>th</sup>, 2023, introducing three new sections within the School Act: First Nation Schools of Choice (section 74.2), Model Local Education Agreement (section 86.1-86.6) and Indigenous Education Council (section 87.001 – 87.005).

### First Nation Schools of Choice

The First Nation Schools of Choice provisions in the *School Act* and related provincial policy establish a process for First Nations to decide which provincial public school(s) their student(s) who live on reserve, or self-governing or Treaty Lands, will attend. The First Nation’s students will then have priority to attend the designated public school. Previously, boards of education set catchment areas for all schools in their districts. In contrast, this optional path respects First Nations’ internal processes in deciding which elementary and/or secondary schools are the best fit for the unique needs of the First Nation’s learners, and not be restricted by catchment areas.

### Model Local Education Agreement

Local Education Agreements (LEAs) are key mechanisms for accountability and effective working relationships where boards of education and First Nations, including Treaty First Nations, work together to support all of the First Nation’s students. LEAs govern the purchase of educational services by First Nations from boards, and set out processes for information-sharing, collaboration, decision-making and reporting.

The new section 86.1 of the *School Act* and Ministerial Regulation M95 provide that First Nations and Treaty First Nations have the option to apply the Model Local Education Agreement (“Model LEA”) where their students live on-reserve or on treaty land and attend a school operated by a board of education and there is no existing Local Education Agreement.

The Model LEA sets a minimum standard for LEAs between boards and First Nations in BC, beyond the mere purchase of education programs and services for First Nation students living on-reserve or Treaty/self-government lands. The Model LEA also addresses communication, information sharing, reporting and mutual accountability mechanisms to better support all the First Nation member students. If a First Nation requests the Model LEA to apply, the Model LEA is deemed to be a contract between the First Nation and the relevant board of education. FNESC and the Ministry drafted a fillable template letter to facilitate a First Nation’s request to apply the Model LEA.

## Indigenous Education Councils

Sections 87.001-87.005 of the *School Act* now require Indigenous Education Councils (IECs) in all 60 school districts and effectively require a reset of how IECs are established and operated. Previously, IECs were typically established by boards and were varied in their mandate and composition. Now, IECs must be established and operated to serve specific purposes relating to supporting Indigenous student outcomes and respecting the distinct languages, cultures, customs, traditions, practices and histories of the First Nation(s) in whose territory(ies) the board operates. Membership and Terms of Reference for IECs must be in alignment with new legislation and must prioritize representation from local First Nations. This new approach to IECs emphasizes a Distinctions-Based Approach that recognizes that not all rights are uniform or the same between Indigenous peoples, consistent with Principle 10 of the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*.

The *School Amendment Act* represents systemic shifts in public education to better meet the needs of First Nation students. These changes are intended to support a more relevant and responsive public education system that appropriately recognizes First Nations as the inherent title and rights holders in their respective territories in what is now referred to as British Columbia. Consistent with the *BC Tripartite Education Agreement*, FNEC continues to work with the Ministry of Education and Child Care on legislative, policy, and practice reforms to improve educational outcomes and attendance for First Nation students.

## Distinctions-Based Approach

The Province released its Distinctions-Based Approach Primer ("DBA Primer") in December of 2023 to assist the Province in building an understanding of the legal basis for, and core elements of, a distinctions-based approach in all of the Province's relations with First Nations, Métis, and Inuit. The recent *School Amendment Act*, as well as recent and upcoming supporting ministerial orders, regulations and provincial policy are informed by the Province's position set in the DBA Primer and any supplementary documents that will follow. First Nations Leadership have expressed concerns regarding a proper application of the Province's Distinctions-Based Approach through resolutions and correspondence to the Ministry of Education and Child Care included in this resource.

Consistent with the *BC Tripartite Education Agreement* and the *Declaration on the Right of Indigenous Peoples Act*, FNEC and the Ministry are working in partnership on legislative, policy, and practice reforms to improve educational outcomes and attendance for First Nation students. The *School Amendment Act* supports systemic shifts in public education to better meet the needs of First Nations learners, families, and communities including respecting the distinct languages, cultures, customs, traditions, practices and histories of the First Nation(s) in whose territory(ies) the board operates. These changes support a more relevant and responsive public education system that appropriately recognizes First Nations as the inherent title and rights holders in what is now referred to as British Columbia.



## SECTION 1

# Political & Legislative Context

### IN THIS SECTION

1.1 Summary of DRIPA Action Plan (Education-Specific Sections) .....	1-1
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## **BC Declaration on the Rights of Indigenous Peoples Act Action Plan: Summary of Education-Specific Actions**

*The following education-specific items are excerpted from the BC Declaration on the Rights of Indigenous Peoples Act Action Plan, March 30, 2022. The full document is available at <https://declaration.gov.bc.ca/>.*

### **K-12 SPECIFIC ITEMS**

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#### **Theme 1: Self-Determination and Inherent Right of Self-Government**

- 1.6 Co-develop an approach to deliver on the BC Tripartite Education Agreement commitment, in which the Ministry of Education and Child Care and the First Nations Education Steering Committee will co-develop legislation that requires local education agreements (LEAs) with First Nations where a First Nation wants one, and that requires the application of the provincial LEA at the request of a First Nation. (Ministry of Education and Child Care)
- 1.7 Update the Bilateral Protocol agreement between the BC Ministry of Education and Child Care and the First Nation Education Steering Committee for relevancy, effectiveness, and consistency with the UN Declaration to support First Nation students in the K-12 education system. (Ministry of Education and Child Care)

#### **Theme 3: Ending Indigenous-specific Racism and Discrimination**

- 3.3 Conduct an external review of Indigenous-specific racism and discrimination in the provincial public education system, and create a strategy, including resources and supports, to address findings. (Ministry of Education and Child Care)
- 3.4 Implement a mandatory course or bundle of credits related to First Peoples as part of graduation requirements in B.C. and co-create culturally relevant provincial resources with Indigenous people for use by all educators across the K-12 education system. (Ministry of Education and Child Care)

#### **Theme 4: Social, Cultural, and Economic Well-being**

- 4.1 Identify and undertake concrete measures to increase the literacy and numeracy achievement levels of Indigenous students at all levels of the K-12 education system, including the early years. (Ministry of Education and Child Care)
- 4.2 Develop and implement an effective recruitment and retention strategy to increase the number of Indigenous teachers in the K-12 public education system. (Ministry of Education and Child Care, Ministry of Advanced Education and Skills Training)
- 4.3 Co-develop and implement a framework for the involvement of Indigenous Education Councils in school district financial planning and reporting. (Ministry of Education and Child Care)
- 4.4 Identify, develop and implement mechanisms and approaches to enable boards of education to better support Indigenous students, including increasing and ensuring equitable access to education and safe environments. (Ministry of Education and Child Care)
- 4.29 Establish an Indigenous-led working group to develop a strategy for the revitalization of Indigenous languages in B.C., including potential legislative supports. (Ministry of Indigenous Relations and Reconciliation, Ministry of Education and Child Care, Ministry of Advanced Education and Skills Training)
- 4.30 Support Indigenous language revitalization through sustainable funding. (Ministry of Indigenous Relations and Reconciliation, Ministry of Advanced Education and Skills Training)

- 4.31 Develop full-course offerings in First Nation languages and implement the educational Calls to Action from the Truth and Reconciliation Commission in the K-12 education system. (Ministry of Education and Child Care)
- 4.32 Co-develop a K-12 First Nations Language Policy and associated implementation plan for the public education system with the First Nations Education Steering Committee, including ensuring that the language and culture of the local First Nation(s) on whose territory(ies) a board of education operates schools are the ones primarily reflected in any First Nations language and culture programs and services of the board. (Ministry of Education and Child Care)

## *POST-SECONDARY SPECIFIC ITEMS*

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### **Theme 1: Self-Determination and Inherent Right of Self-Government**

- 1.8 Recognize the integral role of Indigenous-led post-secondary institutes as a key pillar of B.C.'s post-secondary system through the provision of core funding, capacity funding and the development of legislation. This includes institutes mandated by First Nations, as well as a Métis post-secondary institute being developed by Métis Nation BC. (Ministry of Advanced Education and Skills Training)
- 1.9 Work with the Nicola Valley Institute of Technology, and the Urban Native Youth Association to co-develop an urban Indigenous centre that supports the childcare, housing and post-secondary needs of Indigenous learners, and strengthen the capacity of the Native Education College to provide culturally relevant post-secondary opportunities for urban Indigenous learners. (Ministry of Advanced Education and Skills Training)

### **Theme 4: Social, Cultural, and Economic Well-being**

- 4.5 Co-develop a policy framework for Indigenous post-secondary education and skills training that includes:
  - supporting post-secondary institutions to be more culturally relevant and responsive to the needs of First Nations, Métis and Inuit learners and communities;
  - expanding the Aboriginal Service Plan program to all 25 public post-secondary institutions;
  - ensuring that Indigenous learners have access to student housing that is safe, inclusive, and enables them to thrive personally, academically, and culturally;
  - developing mechanisms for First Nations, Métis and Inuit learners and communities to play an integral role in public post-secondary institutions' decision-making; and
  - identifying legislative amendments needed to ensure all public post-secondary institution boards include at least one Indigenous person. (Ministry of Advanced Education and Skills Training)
- 4.18 As committed to in the First Nations Children and Youth in Care Protocol, co-develop and implement measures to support improved education outcomes of current and former First Nation children and youth in care, including meaningful data collection to inform policy planning and service delivery. (Ministry of Education and Child Care, Ministry of Children and Family Development, Ministry of Advanced Education and Skills Training)
- 4.41 Work with First Nations, Métis chartered communities and urban Indigenous organizations to provide funding for self-determined, community-led programs for Indigenous Peoples to upgrade skills, obtain credentials, secure employment, and develop and support community economies. (Ministry of Advanced Education and Skills Training, Ministry of Social Development and Poverty Reduction).

## SECTION 2

# School Act Amendments

### IN THIS SECTION

- 2.1 News Release: BC Province makes systemic changes..... 2-1
- 2.2 Bill 40: School Amendment Act, 2023 (Key Sections)..... 2-3



## NEWS RELEASE

For Immediate Release  
Oct. 25, 2023

Ministry of Education and Child Care

### **Province makes systemic change to improve outcomes for K-12 Indigenous students**

VICTORIA – Indigenous people will soon have more input into the decisions and processes affecting the education of Indigenous children and youth in B.C. public schools.

“These proposed changes acknowledge the crucial importance of First Nations involvement in the education of Indigenous students,” said Rachna Singh, Minister of Education and Child Care. “Part of reconciliation is to listen and make the changes needed to ensure First Nations students succeed in school.”

The Province is proposing amendments to the School Act to fulfill commitments in the Declaration Act Action Plan and the BC Tripartite Education Agreement (BCTEA). The changes are intended to support better education outcomes for First Nations and other Indigenous students attending provincial public schools, and more effective relationships between boards of education and First Nations. The proposed changes take a distinctions-based approach and were developed collaboratively with the First Nations Education Steering Committee and reflect consultation with First Nations and Indigenous people across B.C.

“Today is an important day for First Nation learners and the provincial education system in B.C. These changes to the School Act are aimed at improving First Nation student learning outcomes through effective relationships and processes that respect the inherent authority and role of First Nation governments, parents and communities in the education of their children and youth,” said Tyrone McNeil, president, First Nations Education Steering Committee (FNESC). “First Nations control of First Nations education underpins the First Nation education system we have spent three decades building in B.C. This work includes ensuring the provincial public school system is responsive to, and respects and incorporates the perspectives of, First Nations to better support this student population in a meaningful and appropriate way.

“Indigenous students, particularly First Nation students living on reserve, face systemic barriers that result in inequitable outcomes in the K-12 system and, so, the changes in this suite of amendments represent systemic, transformative and welcome changes.”

The proposed legislation will ensure that First Nations and Treaty First Nations have the option to apply a model Local Education Agreement (LEA) with boards of education should a First Nation request it. LEAs govern the purchase of educational services by First Nations from boards of education, and set out processes for information sharing, collaboration and decision-making. LEAs can establish a foundation for positive relationships between First Nations and school boards to support improved student outcomes and engage on broader issues.

Changes to the School Act will require all boards to establish an Indigenous Education Council (IEC) in their school district to ensure Indigenous people have input into decisions affecting

Indigenous students. The membership and function of IECs will recognize and reflect the local First Nations in whose territories the board operates. IECs will support boards in the provision of ongoing, comprehensive and equitable education and support services for Indigenous students, including providing Indigenous perspectives for the benefit of all students, and advice on, and approving, the board's spending plans and reports in relation to Indigenous Education Targeted Funds.

Finally, the new School of Choice provision in the School Act will enable First Nations to decide which school First Nations students who live on reserve, self-governing or Treaty Lands will attend.

This legislation was collaboratively developed with FNEC and reflects commitments in BCTEA and the Declaration Act Action Plan, including actions 1.6 (LEAs), 4.3 (IECs) and 4.4 (school of choice). Additionally, the Province engaged with First Nations and Indigenous people across the province to consult and create the legislation.

**Learn More:**

- For information about FNEC, visit: <https://fnesc.ca>

**Contact:**

Ministry of Education and Child Care  
Media Relations  
250 208-7705

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Connect with the Province of B.C. at: [news.gov.bc.ca/connect](https://news.gov.bc.ca/connect)

## **Key Sections from Bill 40**

### **School Amendment Act, 2023**

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Government Bill

Fourth Session, Forty-second Parliament

Legislative Assembly of British Columbia

For the full document, please see <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/first-reading/gov40-1>





Key Sections

BILL 40 – 2023  
SCHOOL AMENDMENT ACT, 2023

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

...

***2 The following section is added:***

**First nation schools of choice**

**74 . 2** (1) In this section:

**"designated school"** means a school designated by a first nation, a treaty first nation or the Nisga'a Nation under subsection (2);

**"eligible first nation person"** means a person

- (a) who may enrol, under this Act, in an educational program provided by a board,
- (b) who is a member of a first nation, a treaty first nation or the Nisga'a Nation,
- (c) who is ordinarily resident
  - (i) on a reserve as defined in section 2 (1) of the *Indian Act* (Canada),
  - (ii) on treaty lands,
  - (iii) on Nisga'a Lands, or
  - (iv) on shíshálh lands as defined in section 2 (1) of the *shíshálh Nation Self-Government Act* (Canada), and
- (d) for whom the government of Canada provides funding in relation to the person's educational programs and services;

**"specialty academy"** has the same meaning as in section 82.1.

(2) Despite sections 2, 74.1 (1), (2), (6) and (6.1) and 75 (4), if a first nation, a treaty first nation or the Nisga'a Nation designates, in accordance with subsection (3), a school in the school district of the board, the eligible first nation persons who meet the following residency requirements are entitled to attend the designated school in the next school year:

- (a) the eligible first nation persons who are ordinarily resident of the first nation and are ordinarily resident or boarded in the school district;
- (b) the eligible first nation persons who are ordinarily resident on the treaty lands of the treaty first nation and are ordinarily resident or boarded in the school district;
- (c) the eligible first nation persons who are ordinarily resident on Nisga'a Lands and are ordinarily resident or boarded in the school district.

(3) A designation under subsection (2) must be made in writing to the board of the school district of the school

- (a) by the date established under section 74.1 (4) (a), or
- (b) if the board establishes different dates for different grades, education programs, schools or children under section 74.1 (4) (b), by the earliest of those dates.

(4) A designation under subsection (2) continues for each subsequent school year unless the first nation, the treaty first nation or the Nisga'a Nation revokes the designation.

(5) Despite subsection (2), if a board offers a specialty academy at a designated school, an eligible first nation person may only be enrolled in the specialty academy in the manner specified by the board for general enrolment in the specialty academy.

(6) For certainty, an eligible first nation person who is entitled to attend a designated school remains entitled to enrol in an educational program in accordance with sections 2, 74.1 (1), (2), (6) and (6.1) and 75 (4) provided by the board of a school district.

**3 The following sections are added:**

**Model local education agreement**

**86.1** (1) In this section and sections 86.2 to 86.6:

**"eligible first nation person"** means a person

- (a) who may enrol, under this Act, in an educational program provided by a board,
- (b) who is a member of a first nation, a treaty first nation or the Nisga'a Nation, and
- (c) for whom the government of Canada provides funding in relation to the person's educational programs and services;

**"model agreement"** means a model local education agreement specified by regulation under subsection (2).

(2) The minister may specify, by regulation, any of the following:

- (a) a model local education agreement as a model agreement that includes terms and conditions related to
  - (i) the purchase of educational programs and services by a first nation, a treaty first nation or the Nisga'a Nation from a board,
  - (ii) improving first nation, treaty first nation and Nisga'a Nation student achievement, and
  - (iii) developing relationships between a first nation, a treaty first nation or the Nisga'a Nation and a board;
- (b) requirements in relation to the form and manner for a first nation, a treaty first nation or the Nisga'a Nation to require a model agreement to apply to the first nation, the treaty first nation or the Nisga'a Nation and a board;
- (c) information that must be included by the first nation, the treaty first nation or the Nisga'a Nation in the model agreement.

(3) The term of a model agreement starts on July 1 of the year specified in the model agreement.

### **First nation and board model agreement as contract**

**86.2** (1) Subject to section 86.5, a first nation may, by delivering written notice to the minister and a board, require a model agreement to apply to the first nation and the board.

(2) If a first nation requires a model agreement to apply to the first nation and a board in accordance with subsection (1) and any regulation under section 86.1 (2) (b), the model agreement is deemed to be a contract between the first nation and the board as parties and the terms and conditions of the model agreement apply as if it was a contract entered into by the parties.

...

### ***4 The following Division is added to Part 6:***

## **Division 2.01 – Indigenous Education Councils**

### **Purposes of Indigenous education councils**

**87.001** (1) Each board must establish and maintain an Indigenous education council, for the following purposes:

(a) advising the board respecting any matter relating to the following:

- (i) providing comprehensive and equitable educational programs and services to Indigenous students;
- (ii) improving Indigenous student achievement;
- (iii) integrating into learning environments Indigenous world views and perspectives, in particular those of the first nations, the treaty first nations or the Nisga'a Nation in whose traditional territory the board operates;

- (b) advising on grants provided under this Act in relation to Indigenous students;
- (c) approving plans, spending and reporting related to grants as set out in section 87.002;
- (d) advising the board in relation to the distinct languages, cultures, customs, traditions, practices or history of the first nations, the treaty first nations or the Nisga'a Nation in whose traditional territory the board operates, through advice from the Indigenous education council members representing those first nations, treaty first nations or the Nisga'a Nation.

(2) For certainty, an Indigenous education council is not a committee of a board under section 65 (2) (a) of this Act.

### **Approval of targeted grants – plans, spending and reporting**

**87.002** If the minister provides a direction for a targeted grant under section 106.4 and the targeted grant is related to Indigenous students, the Indigenous education council must,

- (a) before the grant is spent by the board, approve the board's plan for the grant and the board's spending of the grant, and
- (b) after the grant is spent, approve the board's report, if any, on the grant's spending.

### **Minister may order board to consult with Indigenous education councils**

**87.003** The minister may specify, by order, that a board must consult with the Indigenous education council or specified members of the Indigenous education council on a matter specified by the minister.

### **Ministerial orders in relation to Indigenous education councils**

**87.004** (1) Subject to this section, the minister may specify, by order, any of the following in relation to an Indigenous education council:

- (a) establishment and composition of a council;

- (b) the process to appoint council members;
  - (c) voting rights of council members;
  - (d) terms of reference in relation to a council;
  - (e) rules governing the conduct of the business of a council.
- (2) The following individuals may not be members with voting rights of an Indigenous education council:
- (a) a trustee;
  - (b) a board employee.
- (3) The minister may specify in an order under subsection (1) that different members of an Indigenous education council may have different voting rights in respect of different matters.

### **Indigenous education councils establish governance rules**

- 87.005** An Indigenous education council may make rules governing the following, but may not make a rule if that rule is inconsistent with this Act, the regulations or the orders of the minister:
- (a) the process to appoint members of a council;
  - (b) the conduct of a council's business;
  - (c) terms of reference in relation to a council.





## SECTION 3

# First Nation Schools of Choice

### IN THIS SECTION

- 3.1 School Act Section 74.2 Re: First Nation Schools of Choice.....3-1
- 3.2 Backgrounder Bill 40: School Amendment Act 2023 – First Nation Schools of Choice .....3-4
- 3.3 First Nation Schools of Choice Policy .....3-5



## **Key Sections from Bill 40**

### **School Amendment Act, 2023**

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## **First Nation Schools of Choice**

Government Bill

Fourth Session, Forty-second Parliament

Legislative Assembly of British Columbia

For the full document, please see <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/first-reading/gov40-1>

## Key Sections

# BILL 40 – 2023 SCHOOL AMENDMENT ACT, 2023

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

...

## ***2 The following section is added:***

### **First nation schools of choice**

**74 . 2** (1) In this section:

**"designated school"** means a school designated by a first nation, a treaty first nation or the Nisga'a Nation under subsection (2);

**"eligible first nation person"** means a person

- (a) who may enrol, under this Act, in an educational program provided by a board,
- (b) who is a member of a first nation, a treaty first nation or the Nisga'a Nation,
- (c) who is ordinarily resident
  - (i) on a reserve as defined in section 2 (1) of the *Indian Act* (Canada),
  - (ii) on treaty lands,
  - (iii) on Nisga'a Lands, or
  - (iv) on shíshálh lands as defined in section 2 (1) of the *shíshálh Nation Self-Government Act* (Canada),and
- (d) for whom the government of Canada provides funding in relation to the person's educational programs and services;

**"specialty academy"** has the same meaning as in section 82.1.

(2) Despite sections 2, 74.1 (1), (2), (6) and (6.1) and 75 (4), if a first nation, a treaty first nation or the Nisga'a Nation designates, in accordance with subsection (3), a school in the school district of the board, the eligible first nation persons who meet the following residency requirements are entitled to attend the designated school in the next school year:

- (a) the eligible first nation persons who are ordinarily resident of the first nation and are ordinarily resident or boarded in the school district;
- (b) the eligible first nation persons who are ordinarily resident on the treaty lands of the treaty first nation and are ordinarily resident or boarded in the school district;
- (c) the eligible first nation persons who are ordinarily resident on Nisga'a Lands and are ordinarily resident or boarded in the school district.

(3) A designation under subsection (2) must be made in writing to the board of the school district of the school

- (a) by the date established under section 74.1 (4) (a), or
- (b) if the board establishes different dates for different grades, education programs, schools or children under section 74.1 (4) (b), by the earliest of those dates.

(4) A designation under subsection (2) continues for each subsequent school year unless the first nation, the treaty first nation or the Nisga'a Nation revokes the designation.

(5) Despite subsection (2), if a board offers a specialty academy at a designated school, an eligible first nation person may only be enrolled in the specialty academy in the manner specified by the board for general enrolment in the specialty academy.

(6) For certainty, an eligible first nation person who is entitled to attend a designated school remains entitled to enrol in an educational program in accordance with sections 2, 74.1 (1), (2), (6) and (6.1) and 75 (4) provided by the board of a school district.



# First Nations Schools of Choice (SOC) Policy

## BACKGROUND

Prior to the *School Act* changes relating to First Nations Schools of Choice, Boards of Education (*Boards*) set catchment areas for all schools in their district. While some Boards entered into agreements with First Nations relating to a choice of schools, this practice was not consistent across the province.

## POLICY CHANGES

The new First Nations Schools of Choice provisions in the *School Act* set out a process for First Nations to choose which school First Nation students who live on-reserve, self-governing First Nation lands or Treaty lands will attend. These provisions ensure that a First Nation can designate an elementary, middle school (*where applicable*), and secondary school for their students. First Nations will determine which schools the First Nation's students living on-reserve, self-governing First Nation lands or Treaty lands will attend through their own internal processes. If a First Nation parent/caregiver wishes to have their child enrolled at a different program or school (*e.g. specialty programs*) than the school(s) of choice, the existing enrolment provisions apply.

First Nation students who live on-reserve or on Treaty lands have priority to attend the public school designated by their First Nation. The school must be designated by the earliest date of enrolment set by the Board, typically the pre-enrolment or kindergarten enrolment date. Identifying the chosen school on or before the earliest date enables Boards to prioritize the First Nations' choice. The designation of a school of choice will continue unless changed by the First Nation.

If a First Nation has students that are ordinarily resident on-reserve, Treaty lands, or self-governing lands and are boarded outside of that community to attend public school, the First Nation may designate a school within the district where those students are boarded.

This is an optional choice for First Nations. Other agreements between schools, First Nations, or parents/guardians of First Nations students respecting school choice are not affected by this amendment.

## CONSIDERATIONS

- *In some areas of the province, there may not be reasonable choices of different schools.*
- *If there is not a date of enrolment in a district, the First Nation and Board should agree upon a date by which the First Nation will designate the school of choice.*



Ministry of  
Education and  
Child Care

FIRST NATIONS SCHOOLS OF CHOICE POLICY / 2023

# FIRST NATION SCHOOLS OF CHOICE POLICY

## First Nation Schools of Choice

### Policy Statement

First Nations have choice of which British Columbia public schools a First Nation will designate for their students who live on-reserve, on self-governing First Nation lands, or on Treaty lands to attend. If a First Nation parent/caregiver wishes to have their child enrolled at a different program or school (e.g. specialty programs) than the school(s) of choice, the existing enrolment provisions apply.

### Rationale or purpose of policy

As described in the BC Tripartite Education Agreement: Supporting First Nation Student Success (BCTEA), Canada, BC, and the First Nation Education Steering Committee (FNESC) are committed to improving First Nation student outcomes. A principle of BCTEA is recognition and respect for the rights of parents to decide where their child will be enrolled to receive the benefit of an education program.

The *School Act* supports First Nations to determine which British Columbia public schools the First Nation's students living on-reserve, on self-governing First Nation lands or on Treaty lands will attend. It is understood that First Nations will make this determination based on their own internal processes with parents.

### Authority

[\*School Act\* section 74.2](#)

### Policy in full

The [\*School Act\*](#) sets out a process for a First Nation to designate which elementary, middle, and/or secondary school(s) First Nation students who live on-reserve, on self-governing First Nation lands or on Treaty lands are entitled to attend. Once a school is designated by a First Nation, those First Nation students may choose to attend the designated school, and their enrolment will be prioritized by the board of education.

Designating a school of choice is optional for First Nations. This option does not affect other arrangements between a board of education and First Nations or parents/guardians of First Nation students respecting school choice.

First Nations that have school age students who are ordinarily resident of the First Nation or on Treaty lands, are ordinarily resident or boarded in a school district, and have funding for their education provided by Canada, are able to designate school(s) in the school district for those students to attend. For clarity, and recognizing that not all First Nation students are able to receive an education within their community for a variety of reasons, First Nations that have students that are ordinarily resident of the First Nation or on Treaty lands but are boarded outside of their community for the purpose of attending school, are eligible to designate school(s) in that district under the legislation.

Specialty academies (i.e. sports programs) may not be designated as a school of choice. If a student wishes to attend a specialty academy, they may apply through the board's existing enrolment procedures.



First Nations will determine which school(s) they will designate through their own internal processes. The designation of a school of choice is made for the entire community, and First Nations may not make separate designations for individual students/families.

A First Nation may choose not to designate a school of choice for their students.

### **Designation - process**

To designate a school, a First Nation must inform a board of education in writing of the name of the school by the earliest date of enrolment set by the board, typically the pre-enrolment or kindergarten enrolment date. This date is intended to allow First Nation parents to make use of the school of choice designation for the following school year.

If a board of education does not have a set date of enrolment, the First Nation and board should meet to agree upon a date by which the First Nation will designate a school of choice.

A First Nation may designate an elementary, middle, and/or high school for their students, as applicable.

Once a school has been designated by a First Nation, that designation will continue until a First Nation revokes the designation or designates a different school by notifying the board in writing.

### **Student enrolment**

Once a school is designated as a school of choice by a First Nation, their First Nation students who live on-reserve, self-governing First Nation lands, or on Treaty lands have priority to attend the designated school.

Priority enrolment does not extend to specific programs (i.e. French immersion and specialty academies) within designated schools. First Nation students will need to follow existing enrolment provisions or application processes for specific programs.

First Nation students are not required to attend a designated school. A First Nation student may apply to enrol in an educational program at a school other than a designated school and will be prioritized in accordance with the School Act provisions and board of education policies that apply to all students.

This policy does not restrict a board in prioritizing enrolment for First Nation students on an individual basis.

### **Transportation**

First Nations are encouraged to discuss with the board their plans for designating a particular school, prior to making a designation. First Nations and boards should also consider any possible implications for student transportation that may require amendments to current transportation plans for future years.

### **Related Policies**

- [Local Education Agreement Policy](#)

## SECTION 4

# Model Local Education Agreement

### IN THIS SECTION

- 4.1 School Act Section 86.1 – 86.6 Re: Model Local Education Agreement .....4-1
- 4.2 Backgrounder Bill 40: School Amendment Act 2023 – Model Local Education Agreement .....4-4
- 4.3 Ministerial Regulation Re: Model Local Education Agreement .....4-5
- 4.4 Local Education Agreement Policy .....4-34
- 4.5 Template Letter Re: Application of Model LEA .....4-37
- 4.6 Model LEA: Sections that include “First Nation Member Students” .....4-39



## **Key Sections from Bill 40**

### **School Amendment Act, 2023**

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## **Model Local Education Agreement**

Government Bill

Fourth Session, Forty-second Parliament

Legislative Assembly of British Columbia

For the full document, please see <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/first-reading/gov40-1>



## Key Sections

# BILL 40 – 2023 SCHOOL AMENDMENT ACT, 2023

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

...

### ***3 The following sections are added:***

#### **Model local education agreement**

**86.1** (1) In this section and sections 86.2 to 86.6:

**"eligible first nation person"** means a person

- (a) who may enrol, under this Act, in an educational program provided by a board,
- (b) who is a member of a first nation, a treaty first nation or the Nisga'a Nation, and
- (c) for whom the government of Canada provides funding in relation to the person's educational programs and services;

**"model agreement"** means a model local education agreement specified by regulation under subsection (2).

(2) The minister may specify, by regulation, any of the following:

- (a) a model local education agreement as a model agreement that includes terms and conditions related to
  - (i) the purchase of educational programs and services by a first nation, a treaty first nation or the Nisga'a Nation from a board,
  - (ii) improving first nation, treaty first nation and Nisga'a Nation student achievement, and

- (iii) developing relationships between a first nation, a treaty first nation or the Nisga'a Nation and a board;
  - (b) requirements in relation to the form and manner for a first nation, a treaty first nation or the Nisga'a Nation to require a model agreement to apply to the first nation, the treaty first nation or the Nisga'a Nation and a board;
  - (c) information that must be included by the first nation, the treaty first nation or the Nisga'a Nation in the model agreement.
- (3) The term of a model agreement starts on July 1 of the year specified in the model agreement.

### **First nation and board model agreement as contract**

- 86.2** (1) Subject to section 86.5, a first nation may, by delivering written notice to the minister and a board, require a model agreement to apply to the first nation and the board.
- (2) If a first nation requires a model agreement to apply to the first nation and a board in accordance with subsection (1) and any regulation under section 86.1 (2) (b), the model agreement is deemed to be a contract between the first nation and the board as parties and the terms and conditions of the model agreement apply as if it was a contract entered into by the parties.



# Model Local Education Agreement Policy

## BACKGROUND

Local Education Agreements, or LEAs, in addition to being agreements related to purchase of services for on-reserve students, can establish a foundation for a positive relationship between a First Nation and a Board of Education (*Board*) to support improved student attendance and outcomes and engage on broader issues.

Legislative changes will ensure that First Nations and Treaty First Nations will have the option to apply a Model Local Education Agreement with the board where their students who live on-reserve or on treaty land attend school.

## POLICY CHANGES

Local Education Agreements are key mechanisms for accountability and effective working relationships where boards and First Nations or Treaty First Nations, work together to support all of the First Nation's students. Local Education Agreements govern the purchase of educational services by First Nations from Boards, and set out processes for information-sharing, collaboration and decision-making.

First Nations may choose to negotiate a custom Local Education Agreement with the Board or choose not to have a Local Education Agreement. Alternatively, First Nations and Treaty First Nations also have the option to apply the Model Local Education Agreement between the First Nation and Board.

The Model Local Education Agreement can only be applied if there is no existing Local Education Agreement between a First Nation and Board. If a First Nation has a Local Education Agreement in place and wants to move to the Model Local Education Agreement, they would need to conclude the current Local Education Agreement according to the provisions in their agreement.

Both First Nations and Treaty First Nations can apply the Model Local Education Agreement with Boards where the First Nation's students, for whom funding is provided by Canada, are enrolled or will be enrolled. These changes will not impact existing Local Education Agreements. The Model Local Education Agreement is in development and will be available by Spring 2024 for the 2024/25 school year and beyond.

## CONSIDERATIONS

→ *First Nations and Boards that have LEAs may want to review the Model LEA for enhancement to existing agreements or to inform the development of a new custom agreement.*



Ministry of  
Education and  
Child Care

MODEL LOCAL EDUCATION AGREEMENT POLICY / 2023



**PROVINCE OF BRITISH COLUMBIA**  
**REGULATION OF THE MINISTER OF**  
**EDUCATION AND CHILD CARE**

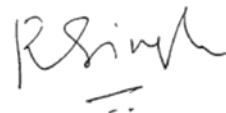
*School Act*

Ministerial Order No. M95

I, Rachna Singh, Minister of Education and Child Care, order that, effective April 30, 2024, the Model Local Education Agreement Regulation is made.

April 18, 2024

*Date*



*Minister of Education and Child Care*

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*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section: *School Act*, R.S.B.C. 1996, c. 412, s. 86.1

Other:

R20779933

page 1 with attachment (29 pages in total)

# MODEL LOCAL EDUCATION AGREEMENT REGULATION

## Definition

- 1 In this regulation, “Act” means the *School Act*.

## Specified model agreement

- 2 For the purposes of section 86.1 (2) (a) of the Act, the attached model local education agreement is specified as a model agreement.

## Information in model agreement

- 3 For the purposes of section 86.1 (2) (c) of the Act, the following information must be included in a model agreement:
  - (a) the name of the parties to the model agreement at the beginning of the agreement, namely, the name of the first nation, treaty first nation or Nisga’a Nation, as applicable, and of the board of education;
  - (b) the year when the term of the model agreement begins and the year when the model agreement ends in section 18.1 of the model agreement;
  - (c) the mailing address and email address of the first nation, treaty first nation or Nisga’a Nation, as applicable, and of the board of education, in section 19.1 of the model agreement;
  - (d) the school district number in the definition of “School District” in section 1 of Appendix A of the model agreement.

**MODEL  
LOCAL EDUCATION AGREEMENT**

BETWEEN:

THE \_\_\_\_\_ [FIRST NATION/INDIAN BAND]

(the “First Nation”)

AND:

THE BOARD OF EDUCATION OF

SCHOOL DISTRICT NO. \_\_\_\_ ([Name of the District])

(the “Board”)

(collectively, the “Parties”)

**WHEREAS**

- A. On July 1, 2018, the Province of British Columbia (the “Province”), the Government of Canada and the First Nations Education Steering Committee (“FNESC”) entered into the BC Tripartite Education Agreement (“BCTEA”). Consistent with the implementation of BCTEA, the Province and FNESC are working together to make systemic shifts to support successful educational outcomes of all First Nation students, regardless of where they live or are enrolled in school in British Columbia, through the provision of high quality and culturally relevant elementary and secondary educational programs and services, and supported by funding that is responsive to the unique needs of First Nation Students and communities.
- B. Local Education Agreements (“LEAs”) are an integral part of the delivery of educational programs and services to First Nation students attending BC Public Schools, as they are an important mechanism for building relationships between First Nation communities and boards of education and BC Public Schools to support improved First Nation student outcomes.
- C. The Province, the Government of Canada, and FNESC developed LEA Guiding Principles, pursuant to Schedule H of the BCTEA to, among other things, apply to and be incorporated substantively into this Model LEA to inform and guide boards of education and First Nations in implementing this Model LEA.
- D. Indigenous peoples have the right to establish and control their educational systems and institutions, as affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* (“UN Declaration”), and as an aspect of their inherent right of self-government as recognized and affirmed under section 35 of the *Constitution Act, 1982*.

- E. The Province enacted the *Declaration on the Rights of Indigenous Peoples Act* (“Declaration Act”) on November 28, 2019, the purposes of which include to affirm the application of the UN Declaration to the laws of British Columbia, and which requires the provincial government to, in consultation and cooperation with Indigenous peoples, take all measures necessary to ensure the laws of British Columbia are consistent with the UN Declaration and to develop an action plan to meet the objectives of the UN Declaration.
- F. Article 14 of the UN Declaration, affirms, *inter alia*, the right of Indigenous people to all levels and forms of education of the State without discrimination, and that States shall, in conjunction with Indigenous peoples, take effective measures, in order for Indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.
- G. The Province released its *Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples* in May 2018 (“10 Principles”), which provide guidance on how representatives of the Province engage with Indigenous peoples. The preamble provides that the 10 Principles:

“...are intended as bold statements to guide this new relationship and end the denial of Indigenous rights that have led to disempowerment and assimilationist policies and practices. The principles will assure the Province conducts itself in a way that reflects a *clear shift in an often troubled relationship with Indigenous peoples to a modern government-to-government relationship that is strong, sophisticated and valued*. These principles create the space needed to exercise our respective jurisdictions for the benefit of all British Columbians. We will recognize success when we know Indigenous peoples believe themselves to be self-determining, self-governing, self-sufficient and can practice their Indigenous cultural traditions and customs as an important and respected part of B.C. society.” (emphasis added)

- H. Principle 10 of the 10 Principles reflects the Province’s recognition of the need to take a distinctions-based approach to its relationship with Indigenous peoples:

*“10. The Province of British Columbia recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of Indigenous peoples in B.C. are acknowledged, affirmed, and implemented.”*

The Province recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown. The work of forming renewed relationships based on the recognition of rights, respect, co-operation, and partnership must reflect the unique interests, priorities and circumstances of each people.”

- I. Application of this Model LEA is a step consistent with the Province's implementation of BCTEA, the UN Declaration, the 10 Principles, as well as the Truth and Reconciliation Commission of Canada’s (“TRC”) Calls to Action for reconciliation.
- J. The First Nation has the authority, pursuant to the *School Act*, to require this Model LEA to apply to the First Nation and the Board.

- K. The First Nation has authority and responsibility with respect to the education of its children and youth, which includes a funding role with respect to First Nation Students, and desires to ensure these children and youth all have access to and receive quality education that is safe, respectful, and reflective of their unique culture and history, and leads to successful education outcomes.
- L. Principals, teachers, and other staff in BC Public Schools have an important role to play in the provision of quality educational programs and services and in the implementation and effectiveness of LEAs.
- M. This Model LEA sets out measures for a relationship between the Parties to support First Nation Member Students, as well as terms and conditions regarding the purchase of educational programs and services by the First Nation from the Board for the First Nation Students.

**THEREFORE** the Parties are responsible as follows:

## **1.0 PURPOSE**

- 1.1 The purposes of the Model LEA are to set out terms and conditions related to:
  - a) the purchase of educational programs and services by the First Nation from the Board for First Nation Students attending Schools in the School District;
  - b) the roles and responsibilities of the Parties in working together to improve First Nation Member Students' achievement, including high levels of success, graduation and transition to post-secondary education and training or employment, acknowledging the important role of BC Public Schools in achieving this; and
  - c) developing relationships between the Parties, including measures for building a positive, effective, collaborative and constructive relationship between the First Nation and the Board.
- 1.2 This Model LEA serves as a core shared accountability mechanism for the Parties regarding the education of First Nation Member Students in the School District.

## **2.0 GUIDING PRINCIPLES**

- 2.1 The Parties will be guided by the UN Declaration, which affirms that Indigenous people have a right to all levels and forms of education of the state without discrimination and that states shall, in conjunction with Indigenous peoples, take effective measures in order for Indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

- 2.2 The Parties will consider all First Nation Member Students where reference to First Nation Students is specified in the LEA Guiding Principles in section 2.3, except in subsection (n).
- 2.3 The Parties will be informed and guided by the LEA Guiding Principles, set out below with clarifications for implementation purposes:

#### **First Nations' Central Role in First Nations Education**

- a) Indigenous families and communities have the right to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child, and Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
- b) First Nations in British Columbia have control of, and decision-making responsibility for, First Nations education.
- c) First Nations have a central role in the education of their students, regardless of where they attend school.

#### **First Nation Students Access to Quality Education**

- d) First Nation Students, at all levels of education, must have access to educational opportunities that:
  - i. ensure that they are confident in their self-identity, their families, their communities and traditional values, languages and cultures;
  - ii. give them the skills they need to thrive in contemporary society, including 21st century technological skills; and
  - iii. prepare them to access any opportunities they choose for higher learning, employment, and life choices.

#### **Reconciliation & Collaboration in First Nation Education**

- e) First Nations education in British Columbia is highly complex, engaging federal, provincial and First Nation authorities, roles and responsibilities and, therefore, requiring collaboration and cooperation to ensure that all First Nation Students are supported to achieve successful education outcomes.
- f) The gap in educational outcomes between First Nation Students and non-First Nation students is a persisting legacy of colonialism, and concerted efforts and proactive measures are required to eliminate this gap and contribute to reconciliation in education.

- g) The Province, Canada, and First Nations in BC as represented by FNEC have a shared interest and priority in supporting excellence in First Nations education, including supporting First Nation Students to fulfil their educational potential by having access to and receiving quality education that is respectful and reflective of their unique culture and history.
- h) Strong, effective and inclusive educational systems provide a fundamental opportunity for building relationships and advancing reconciliation between the Crown and First Nations, as expressed in the TRC Calls to Action and the UN Declaration.
- i) Quality First Nations education includes standards, programs, services, school supports and investments that provide appropriate tools and resources aimed at achieving successful First Nation Student outcomes and achievements, while addressing their unique needs.
- j) Curriculum, materials and resources will meaningfully reflect the First Nations' culture, values, language and traditions.
- k) LEAs are an important mechanism to facilitate relationship-building, from negotiation through to ongoing implementation.
- l) The standards set by the United Nations Declaration apply to First Nations education.
- m) The TRC Calls to Action set out a framework for reconciliation, including with regard to First Nations education, that must inform the relationships and collaboration between First Nations, the Province and boards of education.

#### **Parental Choice**

- n) First Nation governments, through internal government processes with First Nation Parents, have the right to determine which Schools First Nation Students will be entitled to attend to receive the benefit of an education program.

#### **First Nation Student Safety**

- o) First Nation Students have a right to feel safe at school, including safety from racism (perpetuated by students or staff), indifference, bias, marginalization, bullying and stereotyping.

#### **Shared Accountability and Data-Sharing**

- p) LEAs are more than a mere financial transaction and serve as a core shared accountability mechanism for both First Nations and boards of education regarding First Nations education in BC Public Schools.
- q) Timely and relevant data is required to inform decision-making to support First Nation Students.



### 3.0 RESPONSIBILITIES & COMMITMENTS

#### 3.1 The Board will:

- a) ensure that First Nation Member Students have equitable access to educational programs and services in the School District, including any First Nation language instruction program;
- b) strive towards high levels of First Nation Member Student success in educational programs, including by:
  - i. working with the First Nation to support and improve attendance of First Nation Member Students, including developing, maintaining and implementing an attendance protocol that sets out the process for recording student attendance and the approach to excused and unexcused absences, suspensions, partial days, and procedures for reporting absences to Parents, with the overall purpose of encouraging regular attendance necessary for success in Schools;
  - ii. working with the First Nation to develop and implement strategies to keep First Nation Member Students in school;
  - iii. in the case of an Early School Leaver who is still enrolled in an educational program provided by the board, working with:
    - 1. the Parent and the First Nation Student; and
    - 2. the First Nation, where the Parent or First Nation Student, as appropriate, has provided written consent;to collaborate on a plan that best meets the educational needs of that First Nation Student;
  - iv. listing courses, including English First Peoples and locally developed Board Authorized Courses, in the course selection handbook;
  - v. promoting and supporting First Nation cultural activities, including National Indigenous Peoples Day activities, in Schools within the School District; and
  - vi. promoting and supporting effective professional development focused on local First Nations history, language and culture.
- c) ensure any approved local educational resource materials that promote an understanding of and appreciation for the history, language and culture of First Nations people in British Columbia include a primary focus on the local First Nation(s) in whose territory(ies) the Board operates Schools;
- d) support principals and teachers to effectively deliver the educational programs referred to in section 3.1 (a) and (b);

- e) spend Indigenous Education Targeted Funding on educational programs and services in accordance with section 87.002 of the *School Act*;
- f) ensure school personnel encourage and support First Nation Member Students to participate in extracurricular and sports activities including, where practicable, transportation support for First Nation Students;
- g) ensure teachers provide information to Parents of First Nations Member Students regarding their child's educational program (e.g. course selection process, reporting periods, report cards, as required by the *School Act*);
- h) communicate details of this Model LEA, including its purpose and LEA Guiding Principles, with school personnel, in particular principals and teachers; and
- i) wherever this Model LEA provides that a School will perform any obligation under this Model LEA, provide direction to the superintendent, principals, teachers, and other school staff as needed to fulfill that commitment.

### 3.2 The First Nation will:

- a) promote attendance of First Nation Member Students;
- b) promote the active participation and involvement of Parents, families and other community members of the First Nation in the education of First Nation Member Students, including any available processes or forums in the School District (such as parent clubs and other committee processes) and School District or School activities;
- c) encourage and support First Nation Member Students to participate in extracurricular and sports activities; and
- d) subject to receiving Tuition Funding from Canada, pay the Board the Tuition Fees as set out in this Model LEA.

## 4.0 EDUCATIONAL RESOURCES AND PROGRAMS

- 4.1 The Board, in consultation with the First Nation, will introduce culturally relevant educational resource materials and activities in all subject areas for all students, such as through Board Authorized courses, and for events and ceremonies that take place at a School.
- 4.2 The Parties will, with the First Nation providing leadership and direction, work together to address the history of the Indian residential school system through the development and implementation of local educational resource materials, and through professional development opportunities, in a sensitive and appropriate manner.
- 4.3 The Parties will work in partnership to develop and implement First Nation language programs, where requested by the First Nation.

4.4 With regard to intellectual property rights, the Parties acknowledge article 31 of UN Declaration:

Article 31 1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions. 2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

4.5 Consistent with paragraph 1 of article 31 of the UN Declaration:

- a) the First Nation will own any intellectual property rights, including copyright, in any course content or resource materials developed or shared under this Model LEA, either by the First Nation, or the Board in collaboration with the First Nation, regarding the First Nation's language, cultural heritage, traditional knowledge and traditional cultural expressions (the "First Nation-developed Content");
- b) the First Nation approves the Board's use of the First Nation-developed Content as set out below:
  - i. the Board may reproduce the First Nation-developed Content as part of its teaching and professional development materials;
  - ii. the Board will only modify the First Nation-developed Content with the prior consent of the First Nation and approval of the proposed modifications;
  - iii. the Board agrees to use the First Nation-developed Content solely for instructional purposes and for the professional development purposes of the Board's staff; and
  - iv. the Board will ensure that service providers of the Board that may use First Nation-developed Content are aware of these restrictions and that they are required to comply with them;
- c) the Parties acknowledge and agree that any other proposed or intended use of the First Nation-developed Content requires the prior written approval of the First Nation;
- d) should the Board receive written notice from the First Nation of withdrawal of the First Nation's approval provided under paragraph b), the Board will take all reasonable steps to comply with the request including, if requested, removing the First Nation-developed Content from the teaching and professional development materials as soon as operationally feasible;

- e) the Board will:
  - i. give credit to the First Nation, and any individual authors identified to the Board by the First Nation, in connection with the Board's use of the First Nation-developed Content;
  - ii. respect the integrity of the First Nation-developed Content with respect to any modifications to the First Nation-developed Content approved by the First Nation; and
  - iii. upon the request of the First Nation, provide the First Nation with a copy of the First Nation-developed Content.

## **5.0 DOGWOOD DIPLOMA AND GRADUATION**

- 5.1 Given the overrepresentation of Indigenous students in Alternate Programs, and to counter the "racism of low expectations" reported by then Auditor General in the 2015 report "An Audit of the Education of Aboriginal Students in the B.C. Public School System," the Board will actively encourage and support First Nation Member Students to achieve a Dogwood Diploma with 80 credits, rather than an Adult Dogwood or Evergreen (School Completion) Certificate, and will ensure that the intentional or unintentional streaming or marginalization of First Nation Member Students is not tolerated.
- 5.2 The Board and the First Nation will ensure First Nation Member Students and their Parents are provided with information about the implications of receiving a Dogwood Diploma, as compared with the Adult Dogwood and Evergreen (School Leaving) Certificate, to support informed decision-making by those First Nation Member Students and Parents.
- 5.3 The Board will ensure there is appropriate and early counselling support for career and post-secondary education planning available to First Nation Member Students.

## **6.0 MEETING THE NEEDS OF STUDENTS WITH DISABILITIES AND DIVERSE ABILITIES**

- 6.1 Given the overrepresentation of Indigenous students in all Ministry inclusive education funding categories, as those categories are defined in Ministry inclusive education policy, except the Gifted category, the Board will annually review with the First Nation the number of First Nation Students designated in a category.
- 6.2 In particular, the Board and the First Nation will jointly review each year the number of First Nation Students who are designated in either the Intensive Behaviour Interventions or Serious Mental Illness (H) or Moderate Behaviour Supports or Mental Illness (R) inclusive education funding categories, what supports those First Nation Students with designations receive, and the duration of those designations.

- 6.3 The Board will also report to the First Nation the aggregate services provided by the Board to First Nation Students who have disabilities and diverse abilities, whether or not those First Nation Students have an Individual Education Plan.
- 6.4 The Board will ensure that Parents of a First Nation Student are advised in writing and provided the opportunity to be consulted on the designation of their child in an inclusive education funding category.

### **Student Assessments**

- 6.5 In order to ensure that First Nation Students who may have disabilities and diverse abilities are appropriately assessed and supported, the Board will ensure Schools:
- a) work with the First Nation to jointly review and determine meaningful and transparent ongoing processes for informal assessments of First Nation Students to identify those who may require more formal extended assessments (e.g., psycho-educational, behavioural, speech and language, orientation and mobility) to better understand the strengths and needs of those students, and work with Parents to implement those processes; and
  - b) work with the First Nation to jointly review and determine the criteria and processes used for the identification of kindergarten First Nation Students who may require a formal extended assessment and additional supports or services, recognizing that early identification is necessary to promote student success.
- 6.6 In cases where it is determined that a First Nation Student would benefit from a formal extended assessment (either when an assessment has not yet been completed or an additional or updated assessment would be beneficial), the Board will ensure there is a timely assessment to determine the First Nation Student's support and service needs, subject to first obtaining the Informed Consent of the Parent.
- 6.7 The results of any formal extended assessments will be shared:
- a) with the Parent of that First Nation Student; and
  - b) with written consent of the Parent or the First Nation Student, as applicable:
    - i. the school-based team; or
    - ii. any other persons requested by the Parent or the First Nation Student, as applicable.

### **Education Program and Expectations**

- 6.8 Where a First Nation Student has been identified as having a disability or diverse ability, the Board will require that the First Nation Student's needs are identified in a timely manner.

- 6.9 The Board will work with the First Nation to identify and remove barriers to First Nation Students with disabilities or diverse abilities obtaining an education that is appropriate to their needs and provided in the general education setting.
- 6.10 For greater clarity, First Nation Students with disabilities or diverse abilities will be supported to achieve all of the provincial learning standards, with supports, unless there is documented evidence demonstrating:
- a) that all relevant adaptations, supports and services have been tried and are insufficient to meet the First Nation Student's needs; and
  - b) the First Nation Student's diagnosed intellectual disability accompanied by significant limitations in adaptive functioning or a complex medical profile requires the development and inclusion of individualized learning goals, as outlined in their IEP, which should be aligned as closely as possible with the provincial learning standards for the course and with a graduation diploma program.

### **Individual Education Plans**

- 6.11 An IEP will be developed for a First Nation Student who is identified as having disabilities and diverse abilities, and best efforts will always be made to obtain the prior Informed Consent of the Parent.
- 6.12 Boards must provide a First Nation Student's Parent the opportunity to meaningfully consult and collaborate on:
- a) the development of an IEP in relation to the student; and
  - b) changes to the student's educational program, including the addition of supplemental or individualized learning goals, as outlined in their IEP, or the support measures being provided to their child.
- 6.13 In the event that the First Nation Student's Parent declines to be involved in the development of an IEP:
- a) the Board will continue with the development of an IEP to ensure that the First Nation Student's needs are fully met; and
  - b) the Parent may designate another person to participate in the development of an IEP on their behalf.
- 6.14 The Board will ensure a First Nation Student is aware of and has the opportunity to take an active role in the development of their IEP to the extent that the First Nation Student's developmental level and ability permit.

- 6.15 The Board will ensure that learning goals identified in a First Nation Student's IEP will be developed with high and appropriate expectations for achievement.
- 6.16 The Board will ensure the School implements the support services outlined in a First Nation Student's IEP.
- 6.17 The Board will ensure that a First Nation Student's IEP is reviewed at least once each School Year following the year it is developed, with the involvement of the Parent or a designate, as the case may be.
- 6.18 The Board will ensure the First Nation Student's Parent or the Parent's designate, as the case may be, has the opportunity to meaningfully provide input into the update, revision or conclusion of the IEP, where it is determined that an update, revision, or conclusion of an IEP is appropriate.
- 6.19 The Board will ensure that the progress of a First Nation Student who is designated in either the Intensive Behaviour Interventions or Serious Mental Illness (H) or Moderate Behaviour Supports or Mental Illness (R) inclusive education funding categories, as those categories are defined in Ministry inclusive education policy, will be closely monitored to determine when interventions and an IEP are no longer needed for the First Nation Student.
- 6.20 The decision to enroll a First Nation Student in an educational program that leads to an Evergreen (School Completion) Certificate must include the prior Informed Consent of the Parent, and should not be made before:
  - a) the calendar year the First Nation Student is expected to enter Grade 10; and
  - b) there is confirmation:
    - i. by a certified school psychologist or a registered psychologist of a diagnosed intellectual disability accompanied by significant limitations in adaptive functioning that prevents the First Nation Student from meeting the requirements for either the Dogwood Diploma or the Adult Dogwood; or
    - ii. of a complex profile that incorporates evidence from a variety of sources (e.g., medical diagnosis, assessments, IEP, etc.) that prevents the First Nation student from meeting the requirements for either the Dogwood Diploma or the Adult Dogwood, including documentation from a certified school psychologist or registered psychologist outlining the reason why a diagnosis of an intellectual disability accompanied by significant limitations in adaptive functioning could not be made.
- 6.21 The Board will ensure that Parents of a First Nation Student are advised in writing:
  - a) of their right to request a change to the placement of their child on an Evergreen (School Completion) Certificate path;

- b) that if the Parent wishes to request a change in a placement of their child on an Evergreen (School Completion) Certificate path, they may file such a request in accordance with applicable Board bylaws, policies or procedures; and
  - c) that, upon request, the Parent will be provided support from the Board in understanding and navigating the process to request a change in placement of their child on an Evergreen (School Completion) Certificate path from the Board.
- 6.22 The Board will ensure that First Nation Student Parents receive progress reports in accordance with the schedule outlined in the Learning Update Order and that, for First Nation Students whose learning is supported with individualized learning goals, as outlined in their IEP, progress reporting to Parents will be in relation to the First Nation Student's individual goals as laid out in their IEP.

### **Transfers**

- 6.23 Student assessments and IEPs for First Nation Students with disabilities and diverse abilities will be recognized and used as part of the transition and planning process if those First Nation Students transfer between First Nation Schools and Schools.

## **7.0 CHILDREN AND YOUTH IN CARE**

- 7.1 The Board will ensure appropriate staff are designated to be responsible for maintaining communications with the First Nation regarding Children and Youth in Care who are First Nation Member Students.
- 7.2 The Board will make best efforts to identify Children and Youth in Care who are First Nation Member Students, and will ensure appropriate learning plans and supports are developed and implemented for those students to improve their educational outcomes.
- 7.3 For greater certainty, the Board will liaise with the First Nation, the Ministry of Children and Family Development and/or other relevant agencies to identify Children and Youth in Care who are First Nation Member Students, and coordinate services and supports for those students to improve their educational outcomes including, but not limited to, actively encouraging and supporting those students to achieve a Dogwood Diploma.
- 7.4 The Parties will make best efforts to work with relevant agencies to ensure appropriate supports are implemented to assist Children and Youth in Care who are First Nation Member Students.



## **8.0 STUDENT CONDUCT & SAFETY**

- 8.1 The Board, in consultation with the First Nation, will confirm policies, practices and other appropriate measures are in place to support a safe learning environment, including safety from racism (perpetuated by students or staff), discrimination, indifference, bias, marginalization, bullying and stereotyping for all students attending Schools operated by the Board.
- 8.2 With written consent of the First Nation Student's Parent or the First Nation Student, as applicable, the Board will:
  - a) notify the First Nation of disciplinary action and potential escalation of disciplinary action in relation to the First Nation Student; and
  - b) provide to the First Nation a copy of all correspondence related to the discipline of the First Nation Student by a School principal.
- 8.3 The Board will direct principals, teachers and other staff to take a collaborative approach with First Nation education representatives when dealing with general disciplinary issues involving First Nation Students.

## **9.0 CULTURAL AWARENESS & HIRING IN THE SCHOOL DISTRICT**

- 9.1 The Board, in cooperation with the First Nation, will promote awareness and respect for the First Nation's unique language, culture and history through the Board's local policies, practices, plans, activities, protocols, courses, resource materials and instruction.
- 9.2 The Board will ensure that the First Nation has an opportunity to be meaningfully involved in the Board's recruitment and hiring process for school-based personnel whose positions have a significant impact on First Nation Member Students, including First Nation Support Workers, teachers, education assistants, principals and vice-principals.

## **10.0 TRANSPORTATION**

- 10.1 The Parties will identify First Nation Students' transportation needs and jointly develop and sign off a Joint First Nation Student Transportation Plan annually to submit in accordance with the First Nation Student Transportation Fund process.
- 10.2 Once transportation services are agreed to pursuant to an approved Joint First Nation Student Transportation Plan with the First Nation, the Board will not make changes to those services without written agreement of the First Nation.
- 10.3 In the event that the Parties determine they need to revise their Joint First Nation Student Transportation Plan, and that the revisions require further funding, they may submit a revised plan in accordance with the First Nation Student Transportation Fund process.

- 10.4 Where the Parties make amendments to their Joint First Nation Student Transportation Plan, or agree to changes in transportation services, they will ensure that Parents receive notice within a reasonable time, in recognition of Parents' need to respond to changes to the Joint First Nation Student Transportation Plan.
- 10.5 The Board acknowledges all available funding sources allocated to boards of education are to be used for educational programs and services, including transportation costs. These funding sources include provincial operating grant funding, the Student Transportation Fund, proxy transportation funding as included in the First Nation Student Rate, and funding from the First Nation Student Transportation Fund.
- 10.6 The Parties acknowledge that requests for funding for capital acquisition for a replacement bus or a new bus for a new route will be made through the established Ministry Bus Acquisition Program.
- 10.7 The Board acknowledges it is required to complete the annual BCTEA Joint Transportation Reporting Template to be signed by both the Board and the First Nation.
- 10.8 The Board agrees that First Nation Students will not be penalized for, and will be supported in the event of, absences or late arrivals due to transportation challenges in the provision of services agreed to in the Joint First Nation Student Transportation Plan.

## **11.0 REPORTING**

### **11.1 Periodic reports:**

- a) The Board will provide to the First Nation three times each year:
- i. attendance rates, consisting of the number of monthly absences in relation to non-Indigenous students, Indigenous students living off reserve, and First Nation Students;
  - ii. the number of non-Indigenous students, Indigenous students living off reserve, and First Nation Students enrolled in Alternate Programs, online learning programs and courses, secondary courses and ungraded programs;
  - iii. the number of and a summary of the nature of the designation of First Nation Students captured in the Unique Student Needs Supplement (Tables 4a, 4b, 9b and 11 of the Operating Grants Manual);
  - iv. the number of Early School Leavers and information on supports implemented to prevent early leaving; and
  - v. the number of suspensions and expulsions of First Nation Students and information on supports implemented to prevent suspensions and expulsion.

## 11.2 Annual Report:

- a) By January 31 of each year, the Board will produce and provide to the First Nation an annual report outlining the provision of educational programs to First Nation Students under this Model LEA for the previous School Year, including the content in the periodic report set out in section 11.1, as well as:
  - i. the audited financial statements;
  - ii. the Indigenous Education Targeted Funding year-end financial report;
  - iii. the financial statement discussion and analysis report; and
  - iv. measures of success of non-Indigenous students, Indigenous students living off reserve, and First Nation Students through aggregate results for achievement including but not limited to the following:
    1. attendance rates, consisting of the number of monthly absences and number of students absent for more than 18 days per year;
    2. percentage of students who are on track or extending for literacy and numeracy in grades 4 and 7 in the Foundations Skills Assessment;
    3. participation rates for the Foundations Skills Assessments;
    4. the September and February enrolment counts;
    5. five and six-year completion (graduation) rates;
    6. six-year completion (graduation) rates without the Adult Dogwood;
    7. number of students awarded an Evergreen (School Completion) Certificate;
    8. five and six-year completion (graduation) rates for students in an Alternate Program without an Adult Dogwood;
    9. number of school-age students awarded an Adult Dogwood, and the number of adult students awarded an Adult Dogwood;
    10. participation rates for each math course for grades 10 to 12;
    11. course completion rates for students taking online learning courses provided by the Board;
    12. data related to literacy and numeracy assessments required for graduation purposes for successful transition to post-secondary education;

13. number of students involved in school-organized extracurricular programs and activities; and
14. percentage of students who transition into British Columbia public post-secondary institutions within one year of graduation to:
  - a. community colleges;
  - b. Institutes;
  - c. research-intensive universities; and
  - d. teaching-intensive universities.

## **12.0 COMMUNICATION**

- 12.1 The Parties will establish agreed upon means for the successful and effective implementation of this Model LEA, which may include, but not be limited to, regular meetings and contact through newsletters, email and other correspondence, as appropriate.
- 12.2 The Parties recognize the need for effective and ongoing communication with Parents in the support of their child's successful education experience, and the Parties will collaborate to advise Parents of opportunities for input and involvement in their child's education, such as course selection dates, reporting periods, parent-teacher interviews, application deadlines and procedures for applying to post-secondary education.
- 12.3 The Board will encourage functions and meetings, such as parent-teacher interviews, to be held in the community, where possible and at the invitation of the First Nation.

## **13.0 TUITION FEES**

- 13.1 The First Nation will pay to the Board the Tuition Fees for First Nation Students attending Schools operated by the Board and for whom the First Nation has received Tuition Funding from Canada.
- 13.2 The Parties acknowledge that funding is generated for the Board through the provincial funding allocation system and other provincial processes based on the enrolment of First Nation Students attending a School operated by the Board.
- 13.3 The Board will not charge the First Nation a greater amount for the per Full Time Equivalent First Nation Students attending a School operated by the Board than the First Nation Student Rate.

- 13.4 For greater certainty, the Parties agree that the First Nation is responsible for paying only those Tuition Fees for which it received Tuition Funding from Canada according to the approved First Nation Student Rate and approved Nominal Roll and, unless otherwise agreed, the First Nation will not be responsible for paying any amounts for which it does not receive Tuition Funding from Canada, or which exceed the First Nation Student Rate.
- 13.5 The Parties confirm that the enrolment of First Nation Students as of September 29 will be verified through the Joint Verification Process.
- 13.6 To complete the Joint Verification Process under section 13.5, the First Nation will submit the Nominal Roll to Canada and include the signed document confirming the Joint Verification Process has been completed and agreement reached concerning the Full Time Equivalent number of the First Nation Students.
- 13.7 The Parties agree that Tuition Fees payable for each School Year will be paid by the First Nation to the Board according to the payment schedule of the funding agreement or arrangement between the First Nation and Canada, and the First Nation will notify the Board of that schedule once it is determined.
- 13.8 In the event of a School closure due to a labour dispute, the Tuition Fees will be returned to the First Nation on a pro-rated basis determined by the number of days the School is closed.
- 13.9 The Parties agree that Tuition Fees under this Model LEA will be paid as set out in section 13.1, except where:
- a) a First Nation Student has withdrawn from an educational program operated by the Board at least one month before the payment date specified by the First Nation under section 13.7; or
  - b) a First Nation Student has transferred to a First Nation School or a BC Independent School at least one month before the payment date specified by the First Nation under section 13.7,
- in which case, any further Tuition Fees for that First Nation Student will be held by the First Nation to be used for Tuition Fees for the First Nation School or BC Independent School that the First Nation Student has transferred to, or to support the continued education of the First Nation Student in support of their potential re-entry into a B.C. Public School, First Nation School or BC Independent School in the future.
- 13.10 The Board and the First Nation will meet before the invoice for the final Tuition Fee payment set out in section 13.7 is issued to mutually confirm any adjustments due to changes in student enrolment over the course of the School Year in accordance with this Model LEA.
- 13.11 The Board will provide the First Nation with a draft of the invoice referenced in section 13.10 at least 30 days in advance of the meeting.

- 13.12 Educational programs or services that are in addition to those included in Tuition Fees may be provided by the Board as agreed to by the Parties.
- 13.13 Where Canada is late in providing Tuition Funding to the First Nation:
- a) the First Nation will notify the Board of the delay in receiving the funding in a timely manner; and
  - b) the Board will not charge interest to the First Nation on any amount that is outstanding due to Canada's late provision of funding.
- 13.14 If the First Nation elects to no longer directly receive Tuition Funding from Canada to administer under this Model LEA for the following School Year, the First Nation will notify the Board by April 1.
- 13.15 If the First Nation is not directly receiving Tuition Funding from Canada to administer under this Model LEA, sections 13.1, 13.3, 13.4, and 13.7 to 13.14 do not apply.

#### **14.0 EXCEPTIONAL CIRCUMSTANCES**

- 14.1 The Parties recognize that in exceptional circumstances or a human or natural emergency, such as the COVID-19 health pandemic or environmental disaster events, First Nations have and are likely to experience disproportionate and distinct impacts as a result of circumstances such as remoteness, vulnerabilities and capacity.
- 14.2 In the event of exceptional circumstances or a human or natural emergency that impact the provision of in-class learning, the Board will work collaboratively with the First Nation to identify and accommodate First Nation Students' continued education and transportation needs through the development of a jointly signed-off plan for the continuation of education of First Nation Students.

#### **15.0 IMPLEMENTATION, MONITORING, REVIEW: LEA OVERSIGHT TEAM**

- 15.1 The Parties will, within 60 days of the application of this Model LEA, establish a joint LEA Oversight Team responsible for overseeing the implementation, ongoing monitoring and review of this Model LEA, with representation from the First Nation, the Board, and each School at which a First Nation Student attends.
- 15.2 The Parties will jointly develop terms of reference for the LEA Oversight Team within 90 days of the application of this Model LEA, which will become a Schedule to this Model LEA, and which will include:
- a) the membership of the LEA Oversight Team;
  - b) the roles and responsibilities of the LEA Oversight Team, which may include managing the implementation of this Model LEA and delegating tasks as appropriate;

- c) a process for identifying First Nation Member Students who are not on the Nominal Roll;
- d) a plan for developing and finalizing an LEA implementation plan for approval by the Parties within a specified timeframe and which, upon approval, will be appended to this Model LEA; and
- e) reporting requirements.

## **16.0 PERSONAL INFORMATION**

- 16.1 Personal information disclosed by the Board to the First Nation in accordance with this Model LEA may be disclosed pursuant to s. 33(2)(x) of the *Freedom of Information and Protection of Privacy Act*.
- 16.2 The First Nation will make reasonable arrangements to maintain the security of Personal Information disclosed under this Model LEA and in its custody, by protecting it against such risks as unauthorized access, collection, use, disclosure, or disposal.
- 16.3 The First Nation will advise the Board immediately of any circumstances, incidents, or events which, to its knowledge, have jeopardized or may in the future jeopardize the security of Personal Information disclosed under this Model LEA.

## **17.0 DISPUTE RESOLUTION**

- 17.1 If there is a dispute between the Parties with respect to any matter arising from this Model LEA or relating to the interpretation and application of this Model LEA, the Parties agree to use their best efforts to resolve such disputes in a reasonable and timely manner and in good faith.
- 17.2 Where there is a dispute between the Parties, the Parties agree they will attempt to use any and all available means to resolve the dispute at the organizational level closest to which the dispute first arises before referring the dispute to senior level representatives.
- 17.3 The Parties agree to endeavour to resolve issues or disputes that may arise out of this Model LEA, or its implementation, in a manner that fosters an improved, ongoing and respectful relationship between the Board and the First Nation.

## **18.0 TERM & AMENDMENT**

- 18.1 The term of this Model LEA will be 3 years, beginning July 1, 20\_\_ and ending June 30, 20\_\_.
- 18.2 The Parties will meet at least 180 days in advance of the end of this Model LEA to discuss a negotiated LEA.

- 18.3 Notwithstanding section 18.1, the First Nation may terminate this Model LEA by providing notice to the Board, with such termination to be effective at the end of the School Year and with no less than 60 days' notice.

## **19.0 NOTICES**

- 19.1 Any notice, claim, consent, waiver, statement, or other documents or payment that either party may require or may desire to give, may be transmitted by mail, email or personal delivery and will be conclusively deemed validly given or delivered or received by the addressee, if delivered personally on the date of delivery or, if mailed on the fifth business day after the mailing of the same in Canada by registered mail addressed or, if emailed with confirmation of sending:

If to the First Nation:

FIRST NATION  
"Address"  
City  
Postal Code  
Email

If to the Board:

The Secretary-Treasurer  
School District  
"Address"  
City  
Postal Code  
Email

## **20.0 GENERAL**

- 20.1 This Model LEA will be governed by, and construed in accordance with, the laws of the Province of British Columbia.
- 20.2 This Model LEA will be to the benefit of, and binding upon, the Parties and their respective successors and assigns.
- 20.3 The Appendices, if any, form part of this Model LEA.
- 20.4 In this Model LEA:
- a) unless it is otherwise clear from the context, a reference to a "section" means a section of this Model LEA;
  - b) headings and sub-headings are for convenience only, do not form a part of this Model LEA and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Model LEA;



- c) unless otherwise provided, a reference to a statute includes every amendment to it, every regulation, including ministerial order, made under it and amendment made to such regulation, and any successor legislation;
  - d) unless it is otherwise clear from the context, the use of the singular includes the plural and the use of plural includes the singular; and
  - e) where one Party is mentioned in a provision of this Model LEA, this will not be interpreted as implying or inferring any obligation on or acknowledgment by any Party not mentioned in that provision.
- 20.5 The Parties acknowledge that this Model LEA is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the Constitution Act, 1982, and not as creating, amending, defining the nature and scope of, or abrogating or derogating from those rights.

## APPENDIX A: DEFINITIONS

### 1.0 DEFINITIONS

The following definitions apply to the Model LEA:

**“Adult Dogwood”** means a British Columbia Adult Graduation Diploma, that may be issued by the Minister under the *School Act*, to an adult student who meets the graduation requirements as set out in Ministerial Order M164/96, the Student Credentials Order.

**“Alternate Program”** means a specialized educational program that focuses on the educational, social and emotional issues of students whose needs are not being met in a traditional school program. These education programs provide support to students through differentiated instruction, specialized program delivery and enhanced counselling services.

**“BC Independent School”** means an independent school as defined in the *Independent School Act* [RSBC 1996] c. 216.

**“BC Public School”** means any public schools in British Columbia, operated by a board of education or francophone education authority as defined in the *School Act*, providing kindergarten to grade 12 education.

**“Board Authorized Courses”** has the same definition as in Ministerial Order M285/04, the Board Authorized Course Order.

**“Children and Youth in Care”** has the same definition as “child in care” in the *Child, Family and Community Service Act* [RSBC 1996] c. 46.

**“Dogwood Diploma”** means the British Columbia Certificate of Graduation, that may be issued by the minister under the *School Act* and as described in Ministerial Order M164/96, the Student Credentials Order, and, for greater clarity, does not include an Adult Dogwood.

**“Early School Leaver”** means:

- a First Nation Student leaving school prior to the completion of Grade 12, including a student who is expelled; or
- a First Nation Student who has 15 unexcused absences in a month, has missed 75% in any school month, or has missed 40% of a term or semester.

**“Evergreen (School Completion) Certificate”** means a School Completion Certificate, provided to a student with disability or diverse ability who has an IEP and who is enrolled in an educational program that is not designed to meet the graduation requirements, as set out in Ministerial Order M164/96, the Student Credentials Order.

**“First Nation Member Student”** means a student enrolled in a School who is identified in accordance with section 15.2(c) as a member of the First Nation, and includes both First Nation Students and students who are not Ordinarily Resident On Reserve of the First Nation.

**“First Nation School”** means a school located on-reserve and operated and administered by one or more First Nations in British Columbia, and providing education at one or more of the kindergarten 4, kindergarten, elementary or secondary levels, and includes First Nation Independent Schools operating pursuant to the *Independent School Act* [RSBC 1996] c. 216.

**“First Nation Student”** means a student who is Ordinarily Resident On Reserve of the First Nation in British Columbia and is eligible to be on the Nominal Roll.

**“First Nation Student Rate”** means the education costs for a First Nation Student attending a School in the School District, as calculated annually by the Ministry in consultation with FNEC and Canada.

**“First Nation Student Transportation Fund”** means the First Nation Student Transportation Fund established by Canada, British Columbia and FNEC to fund the transportation of First Nation Students to BC Public Schools, as may be amended from time to time.

**“Freedom of Information and Protection of Privacy Act”** means the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165.

**“Full Time Equivalent”** means the full time equivalent as calculated in Canada’s Nominal Roll Instructions.

**“Independent School Act”** means the *Independent School Act*, RSBC 1996, c 216.

**“Indigenous Education Targeted Funding”** means operating funding provided to the Board by the Ministry targeted for school age students of self-identified Indigenous ancestry under section 106.4 of the *School Act*.

**“Individual Education Plan” or “IEP”** means an individual education plan designed for a student as set out in Ministerial Order M638/95, the Individual Education Plan Order.

**“Informed Consent”** means a person’s agreement to allow something to happen, particularly and especially after thoughtful consideration, and after receiving all relevant information that is not unreasonably withheld. In the context of this Model LEA, Informed Consent includes, as applicable, that a person be informed of:

- assessment procedures to be carried out;
- information to be collected;
- interventions that may take place;
- benefits and risks;
- options available, including options to refuse or withdraw consent at any time,

and be provided meaningful opportunity to provide input into a decision.

**“Joint First Nation Student Transportation Plan”** means the Joint First Nation Student Transportation Plan that boards are required to develop and submit to the Ministry annually, and which are to be jointly signed off by a First Nation needing transportation for their First Nation Students under the plan, pursuant to BCTEA.

**“Joint Verification Process”** means the process described in BCTEA by which First Nations and boards jointly review the Nominal Roll enrollment of First Nation Students attending BC Public Schools.

**“LEA Guiding Principles”** means the LEA Guiding Principles developed by the Province, Government of Canada and FNEC, pursuant to Schedule H of the BCTEA.

**“LEA Oversight Team”** means the team established by the Parties under section 15.1.

**“Learning Update Order”** means Ministerial Order M184/23, the Learning Update Order.

**“Minister”** means the Minister of the Ministry.

**“Ministry”** means the provincial ministry described in section 167 of the *School Act* with responsibilities for kindergarten to grade 12 education in British Columbia.

**“Nominal Roll”** means the Nominal Roll as defined in BCTEA.

**“Operating Grants Manual”** means the document issued by the Ministry that provides a detailed description of the operating grant formula in place for a School Year, and which is updated annually and released on or before March 15 every year.

**“Ordinarily Resident On Reserve”** means Ordinarily Resident On-Reserve as defined in BCTEA.

**“Parent”** means, in respect of a student:

- a parent or guardian of the student;
- the person legally entitled to custody of the student; or
- the person who usually has the care and control of the student.

**“Personal Information”** has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

**“Student Transportation Fund”** means a grant provided to boards annually since 2016, to assist with improving transportation services for students.

**“School”** means a school as defined in the *School Act*, operated by the Board.

**“School Act”** means the *School Act*, RSBC 1996, c. 412.

**“School District”** means the area created or constituted under the *School Act* or a former Act as School District # \_\_\_\_.

**“School Year”** means the period beginning on July 1 and ending on the following June 30.

**“Tuition Fees”** means the fees which the First Nation pays to the Board for the purchase of education programs and services for First Nation Students in the School District at the First Nation Student Rate.

**“Tuition Funding”** means the Tuition Funding received by the First Nation from Canada for the education of the First Nation Students of the First Nation which is invoiced as Tuition Fees by the Board as per the First Nation Student Rate.

## **Local Education Agreement Policy**

### **Date came into force or revised**

In effect April 30, 2024

### **Status**

Current

### **Policy statement**

Local Education Agreements (LEAs) are agreements between First Nations and boards of education for the purchase of educational programs by First Nations from boards for First Nation students for whom the government of Canada provides funding. LEAs also include terms and conditions related to improving First Nation student outcomes and developing the relationships necessary to accomplish that mutual goal, and to be a shared accountability mechanism regarding the education of First Nation students in British Columbia public schools.

Boards and First Nations are encouraged to negotiate LEAs.

Under the *School Act*, First Nations, Treaty First Nations, and the Nisga'a Nation have the option to require the Model Local Education Agreement (Model LEA), as specified in the Model Local Education Agreement Regulation, to apply to their nation and a board.

### **Rationale or purpose of policy**

As described in the *BC Tripartite Education Agreement: Supporting First Nation Student Success* (2018), Canada, BC, and the First Nation Education Steering Committee (FNESC) are committed to improving First Nation student outcomes and acknowledge LEAs as an important mechanism to increase accountability and to promote and achieve effective working relationships between First Nations and boards of education, enabling them to work collaboratively to support First Nation students.

The legislation and policy supports the implementation of the Declaration on the Rights of Indigenous Peoples Act Action Plan action 1.6, which commits to the co-development of legislation that requires LEAs with First Nations where a First Nation wants one, and that requires the application of the provincial LEA at the request of the First Nation.

### **Authority**

See [School Act \(PDF\)](#) s. 86.1- s. 86.5.

See M95/2024, the [Model Local Education Agreement Regulation \(PDF\)](#).

### **Definitions**

“Modern Treaty Nation” means a Treaty First Nation and includes the Nisga'a Nation.

### **Policy in full**

The Model Local Education Agreement Regulation specifies the Model LEA that a First Nation may apply to the First Nation and a board of education, pursuant to the *School Act*. Once applied, the Model LEA is deemed to be a contract between the First Nation and board.

First Nations may choose to negotiate an LEA with a board of education, and boards of education are strongly encouraged to negotiate LEAs if a First Nation so desires. First Nations may also choose to not establish an LEA with a board of education. Negotiated LEAs may be established between one or more First Nations and/or Modern Treaty Nations and a board of education.

The Model LEA serves as an available precedent for a First Nation and board negotiating an LEA. For clarity, if a First Nation and board have been unable to negotiate an LEA, the First Nation may require the Model LEA to apply to the First Nation and board in accordance with the *School Act*.

### **Purpose of LEAs**

LEAs often set out terms and conditions related to:

- The purchase of educational programs and services by the First Nation from a board for First Nation students for whom the government of Canada provides funding in relation to education.
- The roles and responsibilities of First Nations and boards in working together to improve First Nation student achievement.
- Developing relationships between First Nations and boards.

Through BCTEA, Canada, BC, and FNESC developed Guiding Principles for LEAs, which are often set out in LEAs. The Guiding Principles for LEAs include the following themes:

- First Nations' central role in First Nation education
- First Nation Students access to quality education
- Reconciliation & collaboration in First Nation Education
- Parental choice
- First Nation Student safety
- Shared accountability and data-sharing

Please see the [Guiding Principles for Developing Local Education Agreements \(PDF\)](#)

### **Model LEA**

The purpose of the Model LEA is to serve as an option that a First Nation may apply to the First Nation and a board. If a First Nation requires the Model LEA to apply, the Model LEA is deemed to be a contract between the First Nation and board.

The Model LEA also serves as an available precedent for a First Nation and a board, if the First Nation and board wish to negotiate their own LEA.

The [Model Local Education Agreement Regulation](#), which came into effect April 30, 2024, specified the Model LEA as the model agreement that a First Nation may apply pursuant to the *School Act*. The Model LEA was developed collaboratively by the Ministry and FNESC.

The terms of the Model LEA reflect and build upon commitments made in the *BC Tripartite Education Agreement: Supporting First Nation Student Success* (BCTEA) between Canada, British Columbia, and FNESC.

## Application of the Model LEA

A First Nation may require the Model LEA to apply to the First Nation and a board where the First Nation's students, for whom funding is provided by Canada, are enrolled or will be enrolled (for example, in the subsequent year), in an educational program provided by the board.

The Model LEA can only be applied if there is no existing LEA in place. If a First Nation has an LEA in place and wants to apply the Model LEA, the First Nation would need to conclude or terminate the current LEA according to the provisions in that agreement.

To apply the Model LEA, a First Nation must provide written notice (e.g., by mail or email) to both the Ministry and the board, and include the following information in the Model LEA:

- The name of the First Nation and the board
- The year when the term of the agreement begins and the year when the agreement ends
  - The Model LEA will always take effect on July 1 (the start of each school year) of the year the term of the agreement begins
  - The term of the Model LEA is 3 years from the effective date, unless terminated earlier by the First Nation
- The mailing and e-mail address of the First Nation and board
- The school district number

A template letter for the purpose of providing written notice of the application of the Model LEA is available for First Nations, and includes a fillable PDF of the Model LEA.

First Nations and boards are encouraged to review the Model LEA to inform the development of negotiated LEAs or amendment of existing LEAs, by agreement.

## Resources

- BC Tripartite Education Agreement (Section 4 and Schedule H).
- [FNESC Local Education Agreements](#)
  - [Guiding Principles for Developing Local Education Agreements \(PDF\)](#)
- [ECC School District Financial Reporting: Local Education Agreement](#)

## Related Policies

- [School of Choice Policy](#)



## Model LEA Application Letter – Instructions

### **\*\* For reference purposes only\*\***

This letter exists as an available template for a First Nation to use to notify a board of education and the Minister of Education and Child Care of the application of the Model Local Education Agreement (Model LEA). To apply the Model LEA, please fill out the Model LEA template and the cover letter Re: Notice to Apply the Model Local Education Agreement.

- All boxes must be filled out, with the appropriate information.
- For reference, boxes must be filled out on pages:
  - 1 (template letter)
  - 3 (First Nation and board of education name)
  - 22 (First year of application, and year of expiration)
  - 23 (First Nation and board contact information)
  - 27 (School district number)
- A First Nation must ensure to use their legal name in the Model Local Education Agreement.

Date \_\_\_\_\_

Hon. Minister Name

Minister of Education and Child Care

Government of British Columbia

620 Superior St

Victoria, BC V8V 2P8

Via Email Only: [ECC.Minister@gov.bc.ca](mailto:ECC.Minister@gov.bc.ca)

Name

Board Chair

School District No. XX (Name of District)

Address

Town, Province, Postal Code

Email

## Re: Notice to Apply the Model Local Education Agreement

Dear Minister Minister Name and Board Chair Name,

First Nation Name is writing to formally require the Model Local Education Agreement (Model LEA) to apply between our First Nation and the Board of Education of School District No. XX (Name of District), effective July 1, Year, pursuant to sections 86.1 and 86.2 of the *School Act*, and the Model Local Education Agreement Regulation B.C. 86/2024.

First Nation Name confirms that:

- a) at least one eligible first nation person (as that term is defined in section 86.1(1) of the *School Act*) of our First Nation is enrolled in or will reasonably be expected to enrol in an educational program provided by the board; and
- b) no other agreement relating to the purchase of educational programs and services with government of Canada funding is in effect (as of the effective date of the Model LEA) between our First Nation and the board.

The applied Model LEA is attached, and includes the names of the parties to the Model LEA, the year when the term of the Model LEA begins and the year when it ends at section 18.1, mailing and email addresses of the parties at section 19.1, and the school district number in the definition of “School District” in section 1 of Appendix A.

We are further requesting a meeting with the Superintendent of Schools and School District senior staff at the earliest opportunity to discuss implementation of the Model LEA.

We look forward to working with you to improve outcomes and attendance for our First Nations learners.

Sincerely,

Name

Title

CC: Name, Superintendent of Schools, School District No. XX (Name of District)

Name, Secretary Treasurer, School District No. XX (Name of District)

Manager, Education Programs, Indigenous Services Canada BC Region

<[BCEducation@sac-isc.gc.ca](mailto:BCEducation@sac-isc.gc.ca)>

### **Model LEA: Sections that include “First Nation Member Students”**

The Model LEA recognizes that First Nations may have students who live on-reserve and attend provincial public schools off-reserve, as well as students who are members of the First Nation but live off-reserve. Collectively, the Model LEA addresses all of the First Nation’s students (on and off-reserve) as “First Nation Member Students”. For those students who live on-reserve, and for whom the First Nation receives education funding from the federal government, the Model LEA distinguishes these students as “First Nation Students” and includes provisions that apply specifically in respect of them.

The LEA Guiding Principles, which are reflected in section 2.2 of the Model LEA, indicate that the parties will consider all First Nations Member Students in respect of most matters, in recognition that First Nations advocate on behalf of all of their citizens/members. Where the First Nation receives federal funding for its on-reserve students, and purchases education programs and services from a board, there are specific contractual obligations engaged that do not apply in respect of those First Nation students who live off-reserve.

Sections of the Model LEA that include all First Nation Member Students are:

#### **WHEREAS**

Recital M notes that the Model LEA sets out “measures for a relationship between the Parties to support First Nation Member Students”.

#### **1.0 PURPOSE**

One purpose of the Model LEA (1.1(b)) is to set out terms and conditions related to the roles and responsibilities of the Parties in “working together to improve First Nation Member Students’ achievement, including high levels of success, graduation and transition to post-secondary education and training or employment, acknowledging the important role of BC Public Schools in achieving this.”

#### **2.0 GUIDING PRINCIPLES**

Section 2.2 clarifies that the LEA Guiding Principles apply to First Nation Member Students, except where specified.

#### **3.0 RESPONSIBILITIES & COMMITMENTS**

The following sections commit the Board to:

- Ensure that “First Nation Member Students have equitable access to education programs and services...” (s. 3.1 a);
- “Strive towards high levels of First Nation Member Student success” (s. 3.1 b)
- Work “with the First Nation to support and improve attendance of First Nation Member Students” (s. 3.1 b i.) as well as to keep them in school (s. 3.1 b ii.);
- “Ensure school personnel encourage and support First Nation Member Students to participate in extracurricular and sport activities” (s. 3.1 f);
- “Ensure teachers provide information to Parents of First Nations Member Students regarding their child’s educational program” (s. 3.1 g);

The following sections commit the First Nation to promote:

- Attendance of First Nation Member Students (s. 3.2 a), active participation and involvement of Parents, families and other community members in their education (s. 3.2 b), and participation in extracurricular and sport activities (s. 3.2 c).

## **5.0 DOGWOOD DIPLOMA AND GRADUATION**

In Section 5.1, the Board commits to actively encourage and support First Nation Member Students to achieve a Dogwood Diploma with 80 credits, rather than an Adult Dogwood or Evergreen (School Completion) Certificate, and to ensure that intentional or unintentional streaming or marginalization is not tolerated.

Section 5.2 ensures that First Nation Member Students and their Parents will be supported to make informed decisions about the student's graduation path.

Section 5.3 commits to provide First Nation Member Students appropriate and early counselling regarding career and post-secondary education planning.

## **7.0 CHILDREN AND YOUTH IN CARE**

The Board commits to:

- Designate appropriate staff to maintain communication with the First Nation regarding Children and Youth in Care who are First Nation Member Students (s. 7.1);
- Make efforts to identify Children and Youth in Care who are First Nation Member Students and ensure appropriate learning plans and supports are developed and implemented (s. 7.2);
- Coordinate services and supports for those students to improve their educational outcomes including, but not limited to, actively encouraging and supporting those students to achieve a Dogwood Diploma (s. 7.3); and
- Work with relevant agencies to ensure appropriate supports (s. 7.4)

## **9.0 CULTURAL AWARENESS & HIRING IN THE SCHOOL DISTRICT**

Section 9.2 ensures the First Nation can be meaningfully involved in the recruitment and hiring process for school-based personnel whose positions have a significant impact on First Nation Member Students, including First Nation Support Workers, teachers, education assistants, principals and vice-principals.

## **15.0 IMPLEMENTATION, MONITORING, REVIEW: LEA OVERSIGHT TEAM**

Section 15.2 (c) requires the LEA Oversight Team to establish a process to identify First Nation Member Students who are not on the Nominal Roll.

## SECTION 5

# Indigenous Education Councils

### IN THIS SECTION

- 5.1 School Act Section 87.001 – 87.005 Re: Indigenous Education Councils .....5-1
- 5.2 Backgrounder Bill 40: School Amendment Act 2023 - Indigenous Education Councils ..... 5-5
- 5.3 Indigenous Education Council Ministerial Order.....5-6
- 5.4 Indigenous Education Council Policy .....5-8
- 5.5 Indigenous Education Council Terms of Reference .....5-15



Key Sections

BILL 40 – 2023  
SCHOOL AMENDMENT ACT, 2023

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

...

***4 The following Division is added to Part 6:***

**Division 2.01 – Indigenous Education Councils**

**Purposes of Indigenous education councils**

**87.001** (1) Each board must establish and maintain an Indigenous education council, for the following purposes:

- (a) advising the board respecting any matter relating to the following:
  - (i) providing comprehensive and equitable educational programs and services to Indigenous students;
  - (ii) improving Indigenous student achievement;
  - (iii) integrating into learning environments Indigenous world views and perspectives, in particular those of the first nations, the treaty first nations or the Nisga'a Nation in whose traditional territory the board operates;
- (b) advising on grants provided under this Act in relation to Indigenous students;
- (c) approving plans, spending and reporting related to grants as set out in section 87.002;

Key Sections

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  - (iii) integrating into learning environments Indigenous world views and perspectives, in particular those of the first nations, the treaty first nations or the Nisga'a Nation in whose traditional territory the board operates;
- (b) advising on grants provided under this Act in relation to Indigenous students;
- (c) approving plans, spending and reporting related to grants as set out in section 87.002;



(d) advising the board in relation to the distinct languages, cultures, customs, traditions, practices or history of the first nations, the treaty first nations or the Nisga'a Nation in whose traditional territory the board operates, through advice from the Indigenous education council members representing those first nations, treaty first nations or the Nisga'a Nation.

(2) For certainty, an Indigenous education council is not a committee of a board under section 65 (2) (a) of this Act.

### **Approval of targeted grants – plans, spending and reporting**

**87.002** If the minister provides a direction for a targeted grant under section 106.4 and the targeted grant is related to Indigenous students, the Indigenous education council must,

(a) before the grant is spent by the board, approve the board's plan for the grant and the board's spending of the grant, and

(b) after the grant is spent, approve the board's report, if any, on the grant's spending.

### **Minister may order board to consult with Indigenous education councils**

**87.003** The minister may specify, by order, that a board must consult with the Indigenous education council or specified members of the Indigenous education council on a matter specified by the minister.

### **Ministerial orders in relation to Indigenous education councils**

**87.004** (1) Subject to this section, the minister may specify, by order, any of the following in relation to an Indigenous education council:

(a) establishment and composition of a council;

(b) the process to appoint council members;

(c) voting rights of council members;

(d) terms of reference in relation to a council;

- (e) rules governing the conduct of the business of a council.
- (2) The following individuals may not be members with voting rights of an Indigenous education council:
  - (a) a trustee;
  - (b) a board employee.
- (3) The minister may specify in an order under subsection (1) that different members of an Indigenous education council may have different voting rights in respect of different matters.

### **Indigenous education councils establish governance rules**

**87 . 005** An Indigenous education council may make rules governing the following, but may not make a rule if that rule is inconsistent with this Act, the regulations or the orders of the minister:

- (a) the process to appoint members of a council;
- (b) the conduct of a council's business;
- (c) terms of reference in relation to a council.



# Indigenous Education Council Policy

## BACKGROUND

Indigenous Education Council, or IECs, are intended to ensure Boards of Education (*Boards*) meaningfully engage with First Nations, Treaty First Nations, and Indigenous communities, and that Indigenous people have input into decisions effecting Indigenous students. Currently, Indigenous Education Councils are established by some Boards, which vary in their mandate and composition, often including district staff and Indigenous service delivery organizations. The new Indigenous Education Council policy will set a provincial standard for Indigenous Education Councils.

## POLICY CHANGES

Changes to the *School Act* requires all Boards to establish an Indigenous Education Council in their school district. Indigenous Education Councils are independent and are not committees of the Board. A provincial terms of reference to be set out in Ministerial Order will provide a common understanding of the role and responsibilities of the Indigenous Education Council. The Indigenous Education Council will be able to develop procedures, based on their local context, on how its meetings will be conducted (*i.e. meeting schedules and location, decision-making processes, dispute resolution*). The Minister will provide direction and guidance to Boards respecting Indigenous Education Council membership. The Minister will ensure that Indigenous Education Council membership will prioritize First Nations on whose territory the school district operates or who are purchasing services and will provide policy direction and guidance on representation from Indigenous organizations based on local context. School Trustees and school district staff may be members of an Indigenous Education Council if invited but they cannot serve as voting members.

Indigenous Education Councils will advise Boards on:

- *Providing comprehensive and equitable educational programs and services to Indigenous students.*
- *Improving Indigenous student achievement.*
- *Integrating Indigenous world views and perspectives into learning environments.*
- *Grants relating to Indigenous students that are provided to boards.*

Local First Nations on the Indigenous Education Council will advise Boards on the distinct languages, cultures, customs, traditions, practices, and history of the First Nations in whose traditional territory the Board operates. Indigenous Education Councils will review and approve plans and reports of Indigenous Education Targeted Funds and advise on the expenditure of other grants earmarked for Indigenous students. This will ensure the funds are spent to support Indigenous students at the direction of Indigenous representatives. The Indigenous Education Council changes take effect immediately and will influence planning for the 2024/25 school year.

## CONSIDERATIONS

- *Existing IEC membership and Terms of Reference must be in alignment with the legislation.*
- *Processes for the approval of Indigenous Education Targeted Funds will need to be in place.*
- An updated Targeted Funding policy is under development.*



Ministry of  
Education and  
Child Care

INDIGENOUS EDUCATION COUNCIL POLICY / 2023

# INDIGENOUS EDUCATION COUNCIL ORDER

**Authority:** *School Act*, sections 87.003 and 87.004

Ministerial Order 217/24 (M217/24) ..... Effective June 26, 2024  
Order of the Minister of Education and Child Care

## Definitions

**1** In this order:

“**board**”, except in section 2 (1), (3) and (4), includes a francophone education authority;

“**eligible first nation person**” means an eligible first nation person as defined in section 86.1 (1) of the *School Act*;

“**first nation**” means a first nation as defined in section 1 (1) of the *School Act*;

“**local first nation**” means a first nation, a treaty first nation or the Nisga’a Nation in whose traditional territory the board operates;

“**non-local first nation**” means a first nation, a treaty first nation, or the Nisga’a Nation whose traditional territory is distinct from where the board operates.

## Establishment and Composition of Indigenous Education Councils

**2** (1) In establishing an Indigenous education council,

- (a) a board must invite each local first nation to designate two persons as members of the Indigenous education council,
- (b) a board must invite each non-local first nation, if an eligible first nation person of the non-local first nation is enrolled in an educational program provided by the board, to designate one person as a member of the Indigenous education council,
- (c) a board must appoint those persons designated under (a) and (b) and
- (d) after seeking advice from each local first nation, and subject to the considerations set out in subsections (2) and (3), a board may appoint additional persons who bring perspectives relevant to the Indigenous student population served by the board, recognizing this population may include first nation, Métis and Inuit students.

(2) In establishing an Indigenous education council, a board must consider the distinctions and diversity among the Indigenous student population served by the board and ensure that the composition of the Indigenous education council reasonably reflects the distinctions and diversity of the Indigenous student population.

(3) Despite subsection (2), in establishing an Indigenous education council, a board must make reasonable effort to ensure that the number of persons appointed under subsection (1) (d) who are not representatives of local first nations is not greater than the total number of persons who are either designated by local first nations under subsection (1) (a) or appointed as representatives of local first nations under subsection (1) (d).

(4) Annually, and when a vacancy occurs on an Indigenous education council, a board must work with the Indigenous education council to review and, if necessary, appoint members in accordance with subsection (1).

## INDIGENOUS EDUCATION COUNCIL ORDER

### Rules for the Conduct of the Business of an Indigenous Education Council

**3** An Indigenous education council must comply with the following rules in the conduct of its business:

- (a) the protocols, laws, customs and traditions of local first nations must be respected;
- (b) the Indigenous education council must
  - (i) be guided by the need to support strong and effective relationships between the board and local first nations,
  - (ii) acknowledge its work is undertaken in the local first nations' territory and have deference to the views and perspectives of members representing local first nations, and
  - (iii) consider the distinctions and diversity of the Indigenous student population in advising the board.

### Board Consultation with Indigenous Education Councils

**4** (1) A board must consult with the Indigenous education council on the following matters:

- (a) the procedures to be carried out by the board to recruit and hire board staff who develop and deliver programs and services for Indigenous students or whose role involves significant interaction with Indigenous students;
- (b) the activities and resources to honour National Day for Truth and Reconciliation and National Indigenous Peoples Day;
- (c) the activities that a board proposes for the purpose of
  - (i) professional development relating to cultural competencies, including the 9<sup>th</sup> Professional Standard for Educators in BC established under section 10 (1) of the *Teachers Act*, and
  - (ii) non-instructional time focused on enhancing Indigenous student achievement or integrating Indigenous worldviews and perspectives into learning environments;
- (d) any annual reports made by the board to the Ministry of Education and Child Care regarding the activities of the Indigenous education councils;
- (e) the reports made by the board in accordance with the Ministerial Order M302/20, Enhancing Student Learning Reporting Order;
- (f) the implementation of initiatives funded by special grants paid under section 115 (1) of the *School Act* that have a particular relevance to or impact on Indigenous students;
- (g) other policy matters impacting Indigenous students.

(2) A board must consult with only the members of the Indigenous education council that are representatives of the local first nations on the following matters:

- (a) how to reflect or integrate the distinct languages, cultures, customs, protocols, traditions, practices or history of local first nations into the learning environments and staff training offered by the board;
- (b) how to integrate the worldviews and perspectives of local first nations into learning environments.

# Indigenous Education Council Policy

Date into force or revised: August 16, 2024

Status Current

## Policy Statement

Each board of education is required to establish and maintain an Indigenous education council (IEC) to support the board to provide comprehensive and equitable education and support services for Indigenous (First Nations, Metis, and Inuit) students and improve Indigenous student outcomes. This includes advising on the appropriate integration of Indigenous worldviews and perspectives, advising on grants in relation to Indigenous students, and ensuring respect for local First Nations in whose territories boards operate school by, for example, giving priority to local cultural content, protocols, and language.

## Rationale/ Purpose

There are persisting disparities in educational outcomes between Indigenous students, in particular First Nation students living on-reserve, and other student populations, and a need for reconciliation in education. Systemic changes are needed to better support Indigenous students. IECs formalize a structure and process to specifically support boards on matters affecting Indigenous students attending BC public schools.

The Province of British Columbia passed the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) into law in November 2019 to, among other things, affirm the application of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) to the laws of British Columbia. The *Declaration Act Action Plan*, established under section 4 of the Declaration Act, includes collectively identified goals and outcomes for implementing, and meeting the objectives of, the UN Declaration in B.C., and includes a specific commitment related to IECs at action 4.3.

## Authority

*School Act* sections 87.001 – 87.005, 93, 95, 166.4 (2.1), and 166.43 (IECs)

*School Act* section 106.4 (targeted grants)

[Ministerial Order 217/2024](#) - Indigenous Education Council Order (IEC Order)

[Ministerial Order 302/20](#) - Enhancing Student Learning Reporting Order

## Definitions

In this policy:

“First Nation” means a First Nation as defined in section 1(1) of the *School Act*;

“local First Nation” means a First Nation, a Treaty First Nation or the Nisga’a Nation in whose traditional territory the board operates.

“Modern Treaty Nations” means a Treaty First Nation or the Nisga’a Nation.

“Indigenous Peoples” has the same meaning as in the *Declaration on The Rights of Indigenous Peoples Act*, and references to Indigenous students refers to students who self-identify as being of Indigenous ancestry, including First Nations, Métis, and Inuit.

“non-local First Nation” means a First Nation, a Treaty First Nation, or the Nisga’a Nation whose traditional territory is distinct from where the board operates.

## **Policy in Detail**

### ***Establishment & Composition of IEC***

Each board of education must establish and maintain an IEC.

A board must invite each local First Nations to designate two persons to be members of the IEC, and the board must appoint those persons designated.

A board must also invite each non-local First Nation with students enrolled in an educational program within the district—and for whom Canada provides funding for the student’s education—to designate one person to be a member of the IEC, and the board must appoint those persons designated. This may include students who are boarded (i.e. living away from their community) or students who travel from a neighboring community.

A First Nation invited to designate a person to be on the IEC may choose not to designate anyone to participate on the IEC.

Using their student data, a board must consider the distinctions and diversity of the Indigenous student population served by the board and must seek the advice of local First Nations on establishing an IEC that reasonably reflects that Indigenous student population. The board must then invite additional persons to the IEC that bring perspectives relevant to the Indigenous student population. Such persons may be individuals who bring perspectives of local First Nation students, First Nation students from other parts of British Columbia or outside of BC, Métis students, or Inuit students. It is not required or intended that the IEC be a precise representation of the composition of the Indigenous student population in the school district. The board must endeavor to achieve an IEC where the total number of representatives of local First Nations are not outnumbered by the additional representatives.

Sometimes it might not be feasible to ensure that the total number of representatives of local First Nations is greater than additional representatives who are not representatives of local First Nations. For example, local First Nations may choose not to participate in the IEC, or the local First Nation may have limited capacity, especially where multiple boards invite them to their IECs.

Boards must, working with the IEC, review membership at least once per year, as well as when there is a new vacancy. If, upon review, the composition of an IEC does not align with subsections 2(1) to 2(3) of IEC Order, the board must issue invitations to designate members, or appoint additional members, in accordance with that order.

Once established, an IEC may create its own rules related to inviting non-voting guests to attend IEC meetings, consistent with the *School Act* and the IEC Order.

School board trustees and employees are not eligible to be voting members of an IEC, pursuant to section 87.004 (2) of the *School Act*.

### ***Role and Expectations of the Board***

An IEC is not a committee of the board; rather, it is a stand-alone body. This means a board cannot direct the IEC but has certain obligations in respect of the IEC.

A board must establish the IEC, in accordance with the IEC Order. A board should establish procedures for appointing the members of the IEC, which must be consistent with the IEC Order and any rules made by the IEC pursuant to section 87.005(a) of the *School Act*. A board may need to appoint members of the IEC, other than the initial IEC, where the IEC does not establish the process to appoint members. A board will keep a register of IEC members.

A board is expected to support the IEC in coordinating and fulfilling administrative tasks associated with the IEC. Support includes covering reasonable costs of holding meetings and IEC member travel to attend meetings when they are held in-person. This also includes providing a standing item on board agendas for IEC advice or decisions.

A board is expected to provide a secretariat or main point of contact for the IEC to assist in IEC membership tracking, meeting and agenda setting, providing information to the IEC, and liaising between the board and IEC.

### ***Participation on Multiple IECs***

Where there is more than one board operating in the traditional territory of a First Nation, the First Nation will be invited by each board to designate representatives to be appointed to an IEC. This will also happen where a non-local First Nation has students for whom Canada provides funding in more than one district. It is up to First Nations to decide whether to accept an invitation to designate representatives to one or more IECs, and who to designate as representatives.

### ***Distinctions-Based Approach***

The Province has adopted a distinctions-based approach to its relations with Indigenous Peoples and advancing reconciliation, as not all rights are uniform or the same among or between all Indigenous Peoples.

The *Declaration Act Action Plan* and the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples* affirm the Province's commitment to a distinctions-based approach in its relations with Indigenous Peoples, which informs the framework for and implementation of IECs.

IECs are intended to reflect and support the distinct and diverse Indigenous student population in their school district, while respecting local First Nations in whose territories the board and the IEC operate.



To understand and align with a distinctions-based approach, it is important to become familiar with the Distinctions-Based Approach Primer (December 2023) [\[link\]](#).

### ***Purpose and Operation of IEC***

The *School Act* requires each board to establish and maintain an IEC.

The purposes of the IEC are set out at s. 87.001(1) of the *School Act*, and are as follows:

- a) advising the board on any matter relating to:
  - providing comprehensive and equitable educational programs and services to Indigenous students;
  - improving Indigenous student achievement; and
  - integrating into learning environments Indigenous world views and perspectives, in particular, those of the First Nation, the Modern Treaty Nations, or the Nisga'a Nation in whose territory the board operates.
- b) advising on grants provided under the *School Act* in relation to Indigenous students;
- c) approving plans, spending and reporting of targeted grants related to Indigenous students;
- d) advising the board in relation to the distinct languages, cultures, customs, traditions, practices or history of the First Nations, the Treaty First Nations or the Nisga'a Nation in whose traditional territory the board operates, through advice from the Indigenous education council members representing those First Nations, Treaty First Nations or the Nisga'a Nation.

The Ministry recommends that IEC decision-making be based on a consensus model, subject to the *School Act* and the IEC Order. An IEC should develop specifics related to their decision-making process, for example, how consensus will be reached and decision-making processes in cases where consensus is not reached.

Template IEC Terms of Reference are attached to this policy. An IEC may develop additional terms of reference governing the conduct of its business to complement what is specified in the IEC Order, and consistent with the *School Act*.

The IEC may establish the process to appoint members of the IEC and determine the term of membership. It is recommended that an IEC member term is a minimum of 2 years in length. An IEC member may be appointed for more than one term.

### ***Rules for the Conduct of Business of an IEC***

An IEC must conduct its work consistent with the rules set out in [section 3 of the IEC Order](#).

An IEC advises and makes recommendations to the board on supporting the Indigenous student population. The IEC members bring forward perspectives relevant to the distinctions and diversity among that student population, while being respectful of the perspectives of local First Nations.

An IEC conducts its work in the local First Nations territory and must support strong and effective relationships between boards and local First Nations, and respect local protocols, laws, customs, and traditions.

### ***Specific Areas of Consultation***

In some cases, the entire IEC will be involved in providing advice or recommendations to the board, or in making decisions, and in others it will be only the local First Nation members of the IEC.

#### ***Consultation with Local First Nation Members of the IEC***

A board must seek the advice of local First Nations on any matter relating to the distinct languages, cultures, customs, traditions, practices, or history of the local First Nations, and must consult with those First Nations on how those matters may be integrated into learning environments or staff training offered by the board.

Integration of local First Nation world views and perspectives into learning environments must be prioritized, and a board must consult with local First Nations on how to integrate this knowledge into learning environments.

In many areas of British Columbia, a board may be working with multiple local First Nations with different worldviews and cultural practices.

#### ***Consultation with the Entire IEC***

The IEC will have a particular focus on the world views and perspectives of local First Nations. At the same time, a purpose of the IEC is to provide advice to the board on the integration of Indigenous world views and perspectives into learning environments, that are not necessarily of local First Nations. This purpose provides space for the IEC to advise the board on Indigenous world views and perspectives relevant to the Indigenous student population.

A board must consult the IEC on procedures to recruit and hire staff that develop and deliver programs and services for Indigenous students, or whose roles involve significant interaction with Indigenous students. Consultation may include reviewing proposed job descriptions, advising on posting or sharing current job opportunities to reach potential candidates, and IEC participation in hiring processes.

A board must consult the IEC on any activities or resources related to the National Day for Truth and Reconciliation and National Indigenous Peoples Day. Any activities or celebrations for these days must be done with the advice of the IEC, and advice must be sought from local First Nation IEC members on protocols for these days.

A board must consult the IEC on training for school district staff relating to cultural competencies, including cultural competency training or workshops focused on the 9<sup>th</sup> Professional Standard for Educators in British Columbia. Boards must also consult the IEC on non-instructional time focused on enhancing Indigenous student achievement or integrating Indigenous world views and perspectives into learning environments, for example the Indigenous Focused Non-Instructional Day.

If a board or school district staff are unsure of how to apply the terms and conditions of collective agreements alongside the requirements of the *School Act* and the IEC Order, they should contact the BC Public School Employers' Association for guidance.

A board must consult the IEC on reporting for the Framework for Enhancing Student Learning, required under the Enhancing Student Learning Report Order, and focusing on Indigenous students. This should be done well ahead of any Ministry required reporting timelines.

A board must also consult with the IEC on any board policies that have a significant impact on Indigenous students.

### ***Secretariat and Administrative Support***

Boards will maintain secretariat and administrative support for the IEC, including covering reasonable costs of holding meetings and IEC member travel to attend meetings when they are held in-person.

### ***Approval of Targeted Funding***

Pursuant to s. 87.002 of the *School Act*, a board requires the IEC's approval of the board's plans, spending, and reporting of any targeted grant provided under s. 106.4 that is related to Indigenous students. The IEC will follow its decision-making process in approving such plans and reporting.

Targeted grants provided under s. 106.4 related to Indigenous students currently include IEC Capacity Funding and Indigenous Education Targeted Funding (IETF).

#### ***IEC Capacity Funding***

IEC capacity funding for the 2024/25 school year has been provided as a targeted grant to cover costs associated with establishing and maintaining IECs, including secretariat support, activities, and costs related to IECs carrying out their purposes. For clarity, IECs must be involved in the planning, spending, and reporting of IEC Capacity Funding.

#### ***Indigenous Education Targeted Funding (IETF)***

The IETF is provided to boards as a targeted grant to support students who self-identify as being of Indigenous ancestry to participate in Indigenous education programs and services. Boards are directed to spend the IETF on the provision of enhanced education programs and services for Indigenous students, that are in addition to other programs and services for which the student is eligible. The amount is in addition to the basic per-pupil allocation.

A board may choose to allocate more core funding to provide supplemental supports for Indigenous programs and services and this should be done in collaboration with the IEC.

IEC approval of IETF planning, spending, and reporting is intended to provide members of the IEC with the opportunity to be involved in decisions relating to the funding of programs and supports provided for Indigenous students.

A board must seek the input and advice, and obtain the approval, of the IEC on the board's IETF plans, spending, and any reporting. For clarity, the board may only implement the IETF plan with IEC approval. The minimum amount of IETF spending is set by the Ministry.

How an IEC provides input, advice, and approval of the IETF and capacity funding will vary. A board and school district staff must work with their IEC to determine an appropriate process for IEC involvement in the planning, spending, and reporting for targeted funding.

Where a board has prior year(s) unspent IETF, the planning, spending, and reporting of those surplus funds also need to be approved by the IEC and in accordance with Ministry direction.

### ***Indemnification of IEC Members***

A board may, by bylaw, provide indemnification for members of the IEC, in the same way that trustees, officers, or an employee of the board may be indemnified as outlined in section 95 of the *School Act*.

### **Resources [for further information]**

K-12 Funding – Indigenous Education [\[link\]](#)

1701 Completion Instructions [\[link\]](#)

Distinctions-Based Approach Primer [\[link\]](#)

Declaration Act Action Plan [\[link\]](#)

Draft Principles that Guide the Province of British Columbia’s Relationship with Indigenous Peoples [\[link\]](#)

United Nations Declaration on the Rights of Indigenous Peoples [\[link\]](#)

If a board of education requires assistance in identifying First Nations in whose territory the school district operates, they are encouraged to contact the Ministry.

These IEC Terms of Reference are provided as a template and are expected to be used as the minimum standard Terms of Reference for an IEC.

Sections of the template must be amended/filled out prior to use, **highlighted in green text**.

## INDIGENOUS EDUCATION COUNCIL TERMS OF REFERENCE

Section 87.005 of the *School Act* authorizes an Indigenous education council (IEC) to make rules governing terms of reference in relation to the IEC that are consistent with the *School Act*, the regulations, or the orders of the Minister, including MO 217/2024, the Indigenous Education Council Order (the IEC Order).

As set out in the IEC Order, an IEC must comply with the following rules in the conduct of its business:

- (a) the protocols, laws, customs and traditions of local first nations must be respected;
- (b) the Indigenous education council must:
  - (i) be guided by the need to support strong and effective relationships between the board and local first nations,
  - (ii) acknowledge its work is undertaken in the local first nations' territory and have deference to the views and perspectives of members representing local first nations, and
  - (iii) consider the distinctions and diversity of the Indigenous student population in advising the board.

### 1. IEC Members

- a) Members of an IEC are appointed in accordance with the Act and Ministerial Order.
- b) Each member may designate one Alternate to attend an IEC meeting and participate on behalf of the member.

### 2. Board Trustees and District Staff

- a) The IEC may, from time to time, invite or request school board trustees and district staff to attend meetings of the IEC.
- b) Trustees and board employees may not be members on an IEC.

### 3. IEC Member Resignation

- a) Should an IEC member resign for any reason, that member will notify the Chair and the Secretariat in writing.

### 4. IEC Chair and Vice-Chair

**\*\*IEC will establish a process to select the Chair and Vice-Chair\*\*.**

- a) The Chair and Vice-Chair of the IEC must each be a voting member of the IEC.
- b) The role of the Chair is to:
  - i. Chair meetings of the IEC,
  - ii. Work with the Secretariat to establish meeting agendas, identify materials for meetings of the IEC and prepare IEC meeting minutes,

- iii. Review advice or recommendations to be submitted to the board to ensure it accurately reflects the advice of the IEC, or the members of the IEC who are providing the advice, as the case may be,
  - iv. With the support of the Secretariat, identify, receive, and share with the IEC all information relevant to the IEC's business and needed to fulfill its purposes, including from the Ministry and/or the board,
  - v. Serve as spokesperson for the IEC, as needed.
  - vi. **\*\*ANY ADDITIONAL ROLE(S) OF A CHAIR\*\***
- c) In the absence of the Chair, the Vice-Chair will assume the role and carry out the duties of the Chair.
- d) A Chair may delegate tasks or duties to a member of the IEC or, where appropriate, may request assistance of a non-voting guest of the IEC.

## 5. Secretariat

- a) The IEC will work collaboratively with and provide direction to the Secretariat to liaise with the district on specific topics, including the planning, spending and reporting of Indigenous education targeted funds, and other grants supporting Indigenous students.
- b) The IEC will develop administrative processes with the Secretariat associated with IEC business, such as member travel, meeting costs, room costs, food and beverages, and stipends or honoraria for members or guests.

## 6. IEC Meetings

**\*\*An IEC must establish its quorum threshold\*\*.**

- a) The Chair, with support of the Secretariat, will establish an IEC meeting schedule that aligns with any *School Act* mandated reporting deadlines to ensure the IEC is able to have discussions and prepare advice, recommendations, or make decisions, to support the board in a timely manner.
- b) The IEC will meet at least \_\_\_\_ times a year (and at least \_\_\_\_ will be in person).
- c) The Chair, with support of the Secretariat, will establish meeting agendas in consultation with the IEC members.
- d) The IEC will provide direction to the Secretariat for communicating and sharing the dates, times, locations, agenda, and meeting materials to all IEC members at least \_\_\_\_ days prior to each meeting.
- e) **\*\*Quorum for IEC meetings is: \_\_\_\_\_\*\*.**
- f) The Chair, with support of the Secretariat, will ensure meeting minutes are prepared and shared with all IEC members within a reasonable period of time following a meeting.

## 7. Decision-making Process

**\*\* The IEC will establish a decision-making process, including a mechanism to address when consensus is not reached, or a vote is tied\*\*.**

- a) Most matters will be decided through general discussion and consensus of the IEC.
- b) If the IEC cannot reach consensus or voting is tied, the IEC will \_\_\_\_\_
- c) Only the local First Nation members of the IEC may advise on local First Nation languages, cultures, customs, protocols, traditions, practices, history, world views, and perspectives.

#### **8. Dispute Resolution Processes**

**\*\*An IEC may wish to establish a dispute resolution process\*\*.**

#### **9. Conflict of Interest**

**\*\*An IEC may wish to establish conflict of interest procedures\*\*.**

#### **10. Providing Advice to the Board**

- a) Recommendations and advice of the IEC will be provided to the board in writing through the Chair.



## SECTION 6

# Distinctions-Based Approach

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# Distinctions-Based Approach Primer

December 2023



# Introduction

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This document is intended to assist the Government of British Columbia (the Province) in building an understanding of the legal basis for, and core elements of, a distinctions-based approach in all of the Province's relations with First Nations, Métis, and Inuit in what is now British Columbia. A companion document will provide guidance to public servants on the practical application of a distinctions-based approach.

A proper understanding and application of a distinctions-based approach is necessary for the provincial government, and is of particular importance for those public servants who are involved in decisions regarding the Province's relations with First Nations, Métis, and Inuit in British Columbia.

This document is not, nor is it intended to be, a complete or comprehensive description of the relationships the Province has with First Nations, Métis, and Inuit, which take many different forms and arrangements.

## Requirement for a Distinctions-Based Approach

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The Province is required to take a distinctions-based approach in all of its relations with First Nations, Métis, and Inuit. This requirement has a legal foundation in the Constitution Act, 1982; the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration); the Declaration on the Rights of Indigenous Peoples Act (Declaration Act); treaties; as well as the respective and distinct laws, legal systems, and systems of governance of First Nations, Métis, and Inuit. This document helps meet this requirement by affirming the Provincial position and ensuring it is applied consistently in legislation, policy, and practice.

➤ **Constitution Act, 1982:** Section 35(2) of the Constitution Act, 1982 identifies three distinct Peoples – Indian, Métis, and Inuit – as the “aboriginal peoples” of Canada.

The Supreme Court of Canada has confirmed that section 35(1) of the Constitution Act, 1982 includes a recognition of the “distinctive societies” of Indigenous Peoples, with “their own practices, traditions, and cultures.”<sup>1</sup>

- » First Nations and Inuit are “distinctive societies” that pre-existed the arrival of Europeans, as sovereigns over their territories; and,
- » Métis are “distinctive peoples who, in addition to their mixed ancestry, developed their own customs, way of life, and recognizable group identity separate from their [First Nations] or Inuit and European forebears.”<sup>2</sup>

The term “Indian” was drawn from the federal Indian Act and is now used primarily in that statutory context. The term “First Nation” is now commonly used to describe the pre-existing Indigenous Peoples who are distinct from Inuit and Métis. The term “aboriginal peoples” is used in the Constitution Act, 1982 to collectively refer to First Nations, Inuit, and Métis Peoples and, therefore, has been used in common law (court decisions) to date. The term “Indigenous” has now replaced the term “aboriginal” as the generally accepted term to collectively refer to First Nations, Inuit, and Métis Peoples. This term should be used intentionally and should not be confused with the term “First Nation,” pursuant to the distinctions expressed in this document.

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1 R. v. Van der Peet, [1996] 2 S.C.R. 507 at para. 31.

2 R. v. Powley, [2003] 2 S.C.R. 207 at para. 10 (“Powley”).

- **UN Declaration and the Declaration Act:** The UN Declaration affirms the diversity and distinctions of Indigenous Peoples, including in the preamble and articles 8, 15, and 34. The UN Declaration refers to Indigenous Peoples as “distinct peoples” that have their own “distinct political, legal, economic, social, and cultural institutions” and the “diversity of their cultures, histories, traditions, and aspirations.” Section 1(2) of the Declaration Act states: “For the purposes of implementing this Act, the government must consider the diversity of the Indigenous peoples in British Columbia, particularly the distinct languages, cultures, customs, practices, rights, legal traditions, institutions, governance structures, relationships to territories and knowledge systems of the Indigenous peoples in British Columbia.” The Declaration Act affirms the application of the UN Declaration to the laws of British Columbia.
- **Treaties:** Treaties are constitutionally protected, government-to-government agreements that identify, define, and implement a range of rights and obligations, creating long-term, mutually binding commitments. Treaties set out the fundamental and unique legal relationship between the treaty Nation, the Province, and Canada. Article 37 of the UN Declaration emphasizes the right of Indigenous Peoples to the recognition, observance, and enforcement of treaties, as well as agreements and other constructive arrangements. British Columbia is unique in that it has both modern treaties (including Nisga’a, Maa-nulth, Tla’amin, and Tsawwassen) and historic treaties (Douglas Treaties and Treaty 8). Each of these treaties varies depending on the particular obligations, interests, rights, jurisdictions, and authorities that are recognized, and represent a critical element within the distinctions-based approach.
- **The Respective and Distinct Laws, Legal Systems, and Systems of Governance of First Nations, Métis, and Inuit:** The UN Declaration affirms Indigenous Peoples’ right to self-determination and, in exercising this right, the right to autonomy or self-government.<sup>3</sup> Flowing from the inherent and human right to self-determination, Indigenous Peoples have the [collective] right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions.<sup>4</sup> In British Columbia, First Nations also have rights to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use.<sup>5</sup>
- **Provincial Policy and Practice:** The Province must take a distinctions-based approach in all of its relations with Indigenous Peoples. Principle 10 of the Draft Principles that Guide the Government of British Columbia’s Relationship with Indigenous Peoples states:

The Province of British Columbia recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests, and circumstances of Indigenous peoples in B.C. are acknowledged, affirmed, and implemented. The Province recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown. The work of forming renewed relationships based on the recognition of rights, respect, co-operation, and partnership must reflect the unique interests, priorities, and circumstances of each people.<sup>6</sup>

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3 UN Declaration, Articles 3-4.

4 UN Declaration, Article 5.

5 UN Declaration, Article 26.

6 Draft Principles that Guide the Government of British Columbia’s Relationship with Indigenous Peoples, p7. 2018

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The Declaration Act Action Plan states:

The Province is committed to a distinctions-based approach. This requires that the Province's dealings with First Nations, Métis, and Inuit Peoples be conducted in a manner that acknowledges the specific rights, interests, priorities, and concerns of each, while respecting and acknowledging these distinct Peoples with unique cultures, histories, rights, laws, and governments. Section 35 of the Constitution Act, 1982, recognizes and affirms the rights of Aboriginal Peoples of Canada, while all Indigenous Peoples have human rights that are expressed in the UN Declaration. However, not all rights are uniform or the same among or between all Indigenous Peoples. In many cases, a distinctions-based approach may require that the Province's relationship and engagement with First Nations, Métis and Inuit Peoples include different approaches or actions and result in different outcomes.<sup>7</sup>

## Meaning of a Distinctions-Based Approach

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A distinctions-based approach, and appropriate respect for Indigenous laws and jurisdictions, means that the scope of rights enjoyed by an Indigenous People is contextual and that the Province's relations and dealings with First Nations, Métis, and Inuit will be conducted in a manner that is appropriate for the specific context, recognizing and respecting the distinct and different rights, laws, legal systems, and systems of governance of each.

The following elements of a distinctions-based approach reflect guidance from international law; the laws, legal systems, and systems of governance of First Nations, Métis, and Inuit; domestic Canadian courts; and the continually evolving laws, policies, and practices of British Columbia.

- **Indigenous Rights are Not Uniform:** Not all rights are uniform or the same among or between all Indigenous Peoples. These rights are diverse, distinct, and contextual under both domestic Canadian law and international law, arising from and in relation to their unique histories, circumstances, laws, legal systems, and systems of governance. As such, the Province's relationship and engagement with First Nations, Métis, and Inuit will require different approaches and result in different outcomes. For example, in the British Columbia context, a distinctions-based approach will result in circumstances where First Nations are engaged but Métis and Inuit are not engaged as rights holders, particularly with respect to the Province's processes, projects, or initiatives that relate to or have implications for the land, water, or air in British Columbia, or associated jurisdiction related to land, water, or air in British Columbia.
- **The Laws, Legal Systems, and Systems of Governance of First Nations in Respect of Land, Resources, and Territories in British Columbia:** First Nations, as territorial title and rights-holders, and the pre-existing sovereign societies that used and occupied lands and resources in British Columbia prior to contact, have their own laws, legal systems, and systems of governance that apply to those lands, resources, and territories. Those laws, legal systems, and systems of governance have not and cannot be unilaterally displaced.

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<sup>7</sup> Declaration on the Rights of Indigenous Peoples Act Action Plan 2022-2027, p3. 2022.

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- **Pre-Existing Sovereignty and Aboriginal Title of First Nations:** A core purpose of section 35 of the Constitution Act, 1982 is to effect reconciliation of “pre-existing Aboriginal sovereignty with assumed Crown sovereignty.”<sup>8</sup> There is a significant body of jurisprudence (common law) confirming the existence of Aboriginal rights of First Nations in British Columbia arising from this prior occupation. This includes a wide range of rights related to land and resources, including Aboriginal title and governance rights.<sup>9</sup> The courts have also confirmed a range of corresponding Crown obligations to First Nations arising out of section 35 of the Constitution Act, 1982. No such findings have been made for Métis or Inuit in British Columbia.
- **Diversity of First Nations and Government-to-Government Relationships:** First Nations have diverse cultures, languages, histories, customs, and practices. In section 35 case law, Canadian courts have emphasized in multiple cases that First Nations’ rights are pre-existing and inherent, and an expression of their distinctive societies that existed prior to the arrival of Europeans. A purpose of section 35(1) of the Constitution Act, 1982 is to protect this distinctiveness, and ensure just reconciliation with the Crown. This diversity must be respected in approaches to respecting and upholding inherent, constitutional, and human rights, and the relationships formed between the Province and First Nations.

Reflecting this, the Province has been developing relationships with First Nations in British Columbia over many years through political protocols and accords,<sup>10</sup> treaties, agreements, and other constructive arrangements, as part of reconciliation of pre-existing First Nations’ sovereignty with the assertion of Crown sovereignty, as required under section 35 of the Constitution Act, 1982.

The Province also has treaty obligations in the pre-Confederation treaties on Vancouver Island, Treaty 8 in the Northeast, as well as the Nisga’a Final Agreement and Modern Treaties concluded under the British Columbia treaty negotiation process.

As well, consistent with the standards of the UN Declaration, the Province recognizes and supports the inherent right of self-determination, including self-government.

As reflected in the Province’s guidance regarding Indigenous Governing Bodies (IGBs), the Province is continuing to realign and adjust its work with First Nations to support and reflect their priorities in Nation and governance re-building.<sup>11</sup> While the Province also regularly engages with the First Nations Leadership Council (FNLC),<sup>12</sup> on issues and matters of concern to First Nations throughout British Columbia, neither the FNLC nor any of the FNLC organizations is a Nation or a People and they do not hold rights and title. Accordingly, engagement with FNLC cannot satisfy any of the Province’s obligations owed to First Nations who are the proper holders of inherent, constitutional, and human rights and title in British Columbia. Any government-to-government relationship is between each individual First Nation and the Province.

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8 *Haida Nation v. British Columbia*, [2004] 3 S.C.R. 511 at para. 20.

9 *Tsilhqot’in Nation v. British Columbia*, [2014] 2 SCR 257 at para. 44.

10 See bilateral Commitment Document (2015) between the Province and FNLC, including the: a) *Joint Agenda: implementing the Commitment Document – Shared Vision, Guiding Principles, Goals and Objectives* (2018); and b) *Joint Agenda: Implementing the Commitment Document – Concrete Actions: Transforming Laws, Policies, Processes and Structures* (2018).

11 [Indigenous Governing Bodies in the Declaration on the Rights of Indigenous Peoples Act](#)

12 The First Nations Leadership Council or FNLC is a collaborative working partnership among the political executives of the BC Assembly of First Nations, First Nations Summit, and the Union of BC Indian Chiefs, formalized by a *Leadership Accord* signed in 2005. They work on topics of mutual interest established through resolution.



- **Métis Rights are Distinct from First Nations or Inuit Rights:** The term “Métis” in section 35 of the Constitution Act, 1982 does not encompass all individuals with mixed First Nation and European heritage; rather, it refers to distinctive peoples who, in addition to their mixed ancestry, developed their own customs and recognizable group identity separate from their First Nation or Inuit and European forebears. As such, “the inclusion of the Métis in s. 35 [of the Constitution Act, 1982] is not traceable to their pre-contact occupation of Canadian territory.”<sup>13</sup> Rather, “the purpose of s. 35 as it relates to the Métis is therefore different from that which relates to [First Nations] or the Inuit... The inclusion of the Métis in s. 35 represents Canada’s commitment to recognize and value the distinctive Métis cultures, which grew up in areas not yet open to colonization, and which the framers of the Constitution Act, 1982 recognized can only survive if the Métis are protected along with other aboriginal communities.”<sup>14</sup>

To account for the unique post-contact emergence of Métis communities and post-contact foundation of their Aboriginal rights, the Supreme Court of Canada set out a distinct common law test regarding Métis rights under section 35 of the Constitution Act, 1982 to recognize and protect those customs and traditions that were historically important features of Métis communities prior to the time of effective European control and persist today. This requires claimants to self-identify as Métis,<sup>15</sup> establish an ancestral connection to an identifiable historic Métis community (which is a “a group of Métis with a distinctive collective identity, living together in the same geographic area and sharing a common way of life”<sup>16</sup>), and demonstrate they are accepted by a modern community, whose continuity with the historic community provides the legal foundation for the right being claimed.<sup>17</sup>

- **No Confirmed Identifiable Historic Métis Community in British Columbia:** While Métis individuals have settled and live in British Columbia, there has been no court decision applicable to British Columbia that has confirmed the existence of any identifiable historic Métis community or Métis homeland in British Columbia. Further, the Métis Homeland, as defined by the Métis National Council<sup>18</sup> does not extend into British Columbia west of the Rocky Mountains.<sup>19</sup>

As such, there are no existing land, water, or air-based Métis rights or associated inherent jurisdiction in British Columbia that trigger the same Crown obligations that are owed to First Nations under section 35(1) of the Constitution Act, 1982 or international law, including the duty to consult and accommodate and the need to obtain free, prior, and informed consent. Accordingly, it is not appropriate to include Métis

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13 *Powley*, supra note 2 at para. 17

14 *Powley*, supra note 2 at para. 17

15 “This self-identification should not be of recent vintage: While an individual’s self-identification need not be static or monolithic, claims that are made belatedly in order to benefit from a s. 35 right will not satisfy the self-identification requirement.”: *Powley*, supra note 2 at para. 31

16 *Powley*, supra note 2 at para. 12

17 *Powley*, supra note 2 at para 30-33.

18 The Métis National Council asserts it is the representative body of the Métis people of northwestern Canada and represents the Métis Nation both nationally and internationally. It receives direction from the elected leadership of the Métis Nation’s provincial-level representative organizations being the Métis Nation British Columbia, Métis Nation of Alberta, Métis Nation Saskatchewan, and the Métis Nation of Ontario. The Manitoba Métis Federation was a founding member of the Métis National Council but left the Métis National Council in 2021.

19 Online: <https://www.cbc.ca/news/indigenous/map-showing-m%C3%A9tis-homeland-boundaries-sparks-online-conversation-1.4928401>.



as rights-holders in any of the Province's processes, matters, projects, or initiatives that relate to the land, water, or air in British Columbia, or associated jurisdiction related to land, water, or air.

As part of the political and social work of addressing the legacy of colonialism and systemic racism in British Columbia, the Province works with Métis Nation British Columbia<sup>20</sup> in respect of Métis who have settled and are living in British Columbia and to recognize and value Métis culture. This work is distinct in scope, nature, and purpose from government-to-government relations the Province has with First Nations. It is important that this work occurs in a manner which recognizes the inherent, human, and constitutional rights of First Nations and upholds the laws, legal systems, and systems of government of First Nations.

- **No Formal Relationship with Inuit Living in British Columbia:** The Inuit do not have a historical homeland in British Columbia, so there are no existing land, water, or air-based Inuit rights or associated jurisdiction in British Columbia that trigger the same Crown obligations that are owed to First Nations under section 35(1) of the Constitution Act, 1982 or international law.

## Applying a Distinctions-Based Approach

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Each ministry and agency across the Province must apply a distinctions-based approach in the development and implementation of its policies, legislation, programs, operations, and funding initiatives, and in its engagement and relationships with First Nations, Métis, and Inuit. This work must be done in a manner that reflects a distinctions-based approach and correctly identifies and engages the appropriate rights-holders.

The Ministry of Indigenous Relations and Reconciliation, with support from other ministries and working with First Nations and Indigenous organizations, will continue to provide guidance regarding a distinctions-based approach, and strategic advice for implementation of a distinctions-based approach across government.

### FOR ADDITIONAL SUPPORT:

For questions specific to the Province's distinctions-based approach and information contained within this document, please contact the Ministry of Indigenous Relations and Reconciliation by emailing [declaration@gov.bc.ca](mailto:declaration@gov.bc.ca).

### KEY SUPPORTING DOCUMENTATION:

Constitution Act, 1982 –

[https://laws-lois.justice.gc.ca/eng/const/page-13.html#:~:text=35%20\(1\)%20The%20existing%20aboriginal,are%20hereby%20recognized%20and%20affirmed.&text=\(2\)%20In%20this%20Act%2C,and%20M%C3%A9tis%20peoples%20of%20Canada](https://laws-lois.justice.gc.ca/eng/const/page-13.html#:~:text=35%20(1)%20The%20existing%20aboriginal,are%20hereby%20recognized%20and%20affirmed.&text=(2)%20In%20this%20Act%2C,and%20M%C3%A9tis%20peoples%20of%20Canada)

United Nations Declaration on the Rights of Indigenous Peoples –

[https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

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20 The Métis Nation British Columbia is a society under the *Societies Act* (BC) and is recognized by the Métis National Council as the Métis Nation's only provincial-level representative organization in British Columbia.

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Declaration on the Rights of Indigenous Peoples Act –

<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>

Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples –

[https://www2.gov.bc.ca/assets/gov/careers/about-the-bc-public-service/diversity-inclusion-respect/draft\\_principles.pdf](https://www2.gov.bc.ca/assets/gov/careers/about-the-bc-public-service/diversity-inclusion-respect/draft_principles.pdf)

# FIRST NATIONS LEADERSHIP COUNCIL

## News Release

December 7, 2023

### **FNLC Supports BC's Release of Distinctions-Based Approach Primer and Clarification of BC's Position on Métis Rights**

(xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish) and səliłwətał (Tsleil-Waututh)/Vancouver, B.C.) The First Nations Leadership Council (FNLC) supports the Province of British Columbia's (BC) release of its long-overdue [Distinctions-Based Approach Primer](#) (Primer) and applauds BC for clarifying its position on Métis rights in what is now known as British Columbia. As noted in the Primer, a distinctions-based approach, and appropriate respect for Indigenous laws and jurisdictions, means that the scope of rights enjoyed by an Indigenous People is contextual and that BC's relations and dealings with First Nations, Métis, and Inuit must be conducted in a manner that is appropriate for the specific context, recognizing and respecting the distinct and different histories, rights, laws, legal systems, and systems of governance of each.

First Nations in what is now known as British Columbia have long called for the Crown to take a distinctions-based, not pan-Indigenous, approach in all its interactions and relations with First Nations, Métis, and Inuit. BC confirmed its commitment and need to taking a distinctions-based approach through the *Declaration on the Rights of Indigenous Peoples Act* Action Plan, and the *Draft Principles Respecting the Province of British Columbia's Relationship with Indigenous Peoples*. The Primer includes helpful direction to provincial ministries and agencies which emphasize the importance of engaging with appropriate rights holders and ensuring that such engagement understands and is based on the history, diversity, and distinctiveness of those rights holders.

With respect to Métis rights in what is now known as British Columbia, the Primer confirms what First Nations have always known: "...there are no existing land, water, or air-based Métis rights or associated inherent jurisdiction in British Columbia." FNLC and First Nations in what is now known as British Columbia have loudly and consistently defended the territories of First Nations against unfounded Métis rights assertions. Most recently this culminated in UBCIC, the BC Assembly of First Nations, and the First Nations Summit – supported by the Manitoba Métis Federation – unanimously passing mirrored resolutions denouncing Métis colonialism in First Nations' territories in British Columbia, and the Crown's past and ongoing facilitation of it. BC's release of the Primer is an important first step in BC responding to First Nations' clear calls for accountability on this pervasive and deeply important issue, and in BC respecting First Nations' title, rights, jurisdictions, laws, legal systems, and systems of governance within and with respect to their territories.

Chief Don Tom, UBCIC Vice-President, stated, "First Nations in what is now known as British Columbia know their territories, histories, and neighbors and they are clear that no rights-bearing historic Métis communities have ever existed here. Despite this fact, Métis organizations, including the Métis Nation British Columbia and BC Métis Federation, have so far failed to be good guests on our territories and regularly assert they have land and water-based inherent and constitutionally protected rights and related jurisdiction. The release of the Distinctions-Based Approach Primer signals that BC is committed to ceasing the role it has historically played in enabling these organizations and we welcome this important first step."

{000113-0060.0001 00893739.7}



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Regional Chief Terry Teegee, remarked, “We know, and our laws, legal orders, and histories tell us, that First Nations are the only Indigenous Peoples with any claims to land, water and air-based rights in what is now known as British Columbia. We are at a time where our First Nations are increasingly confronted by unsubstantiated claims and related infringements to their inherent and constitutionally protected land, water, and air-based rights. This is unacceptable and is perpetuated by a systemic failure by provincial and federal governments to understand the distinctions between Indigenous Peoples, particularly First Nations and Métis. This Distinctions-Based Approach Primer is much needed and must be seriously actioned in order to begin to undo damage done by past ignorance. Far too often our First Nations have been, unacceptably, asked to educate public and private sector actors on these distinctions. BC’s commitment to a distinctions-based approach will help ensure that we are all allies in this work, resting upon a strong, principled foundation from which we can continue to evolve our relationship.”

“It is undeniable that First Nations are the original inhabitants of what is now known as British Columbia and have been here since time immemorial. For many generations, our people have fought tirelessly to protect our inherent and constitutionally protected title and rights, including in the colonial Canadian court. In BC, First Nations are the only Indigenous Peoples that hold and exercise inherent, constitutional, and human rights in respect of land, water, and air, and associated jurisdiction, and it is incumbent on the provincial government to formally and unequivocally respect this. We welcome the release of the provincial government’s Distinctions-Based Approach Primer. It will be a valuable first step in ensuring clarity on these matters and assisting in preventing intrusions in First Nations’ territories and infringements on their inherent laws, legal systems, jurisdictions, and systems of governance”, stated Hugh Braker of the First Nations Summit Political Executive. He added, “Now the priority is to develop concrete guidance to the provincial public service on what it means to engage in and build relations with First Nations in BC that are distinct from any relations with Indigenous Peoples from elsewhere who are guests here and to whom the provincial government does not owe the same obligations.”

-30-

*The First Nations Leadership Council is comprised of the political executives of the BC Assembly of First Nations (BCAFN), First Nations Summit (FNS), and the Union of BC Indian Chiefs (UBCIC).*

**For further information, contact:**

Hugh Braker, FNS, Phone:	604-812-2632
Regional Chief Terry Teegee, BCAFN Phone:	250-962-1603
Chief Don Tom, UBCIC, Phone:	604-290-6083

# FIRST NATIONS LEADERSHIP COUNCIL



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March 18, 2024

**RECEIVED**  
2024 MAR 19

Honourable Rachna Singh  
Minister of Education and Child Care  
PO Box 9045 Stn Prov Govt  
Victoria, BC V8W 9E2  
[ECC.Minister@gov.bc.ca](mailto:ECC.Minister@gov.bc.ca)

## Re: Implementation of a Distinctions-Based Approach in K-12 Education

Dear Minister Singh,

The First Nations Leadership Council (FNLC) is writing to express concern with the Ministry of Education and Child Care's (ECC) inconsistent implementation of a distinctions-based approach in K-12 public education. We are particularly concerned with the lack of direction provided to British Columbia's 60 school districts following the December 2023 release of the Province's Distinctions-Based Approach Primer (DBA Primer). In the absence of clear direction, we are aware that some boards of education are pursuing education agreements with Métis organizations that contradict the purpose and intent of recent amendments to the *School Act*, including respecting and recognizing First Nations on whose territories the boards operate schools. We are seeking an urgent response from ECC to ensure that K-12 public education appropriately reflects First Nations as the inherent title and rights holders in BC.

First Nations in BC, as territorial title and rights holders, and the pre-existing sovereign societies that used and occupied their territories, have distinct laws, legal systems, and systems of governance that apply in their respective territories. Indigenous persons from Nations outside BC, including Métis and Inuit, are guests in our territories. In Fall 2022, the Chiefs-in-Assembly at the First Nations Summit, the Union of British Columbia Indian Chiefs and the BC Assembly of First Nations, each passed resolutions calling on all governments to adopt a distinctions-based approach "to ensure the distinct rights, interests, histories, and contexts of original First Nations as the first occupants and owners of their respective territories are recognized, while also ensuring that there is a recognition that First Nations, as territorial rights holders in BC, are distinct from Métis and/or other Indigenous peoples who are visitors to our territories."

As acknowledged in the Declaration Act Action Plan, “...not all rights are uniform or the same among or between all Indigenous Peoples” and that a distinctions-based approach, in many cases, “may require that the Province’s relationship and engagement with First Nations, Métis and Inuit Peoples include different approaches or actions and result in different outcomes.” The DBA Primer states that the Province’s work with the Métis occurs in a manner which recognizes the inherent, human, and constitutional rights of First Nations and upholds the laws, legal systems, and systems of government of First Nations.

It is our understanding that Métis groups are seeking to assert authority over education matters within First Nations’ territories through “Métis Education Agreements” modeled on content from draft Local Education Agreement templates prepared by FNEC for First Nations. Through these agreements, the Métis groups seek, among other things, to exercise authority in respect of provincial Indigenous Education Targeted Funding. This is contrary to the purpose and intent of the recent amendments to the *School Act*, which implement new approaches designed to respect the primacy of the First Nations in whose territories boards of education operate public schools.

FNLC is also concerned that the January 12, 2024, communication from the Deputy Minister to school districts is creating further confusion among the K-12 sector regarding the distinctions-based approach. While the communication states that “...only First Nations have rights and jurisdiction associated with land, water, and air in British Columbia, on a distinct territorial basis,” it adds that “Métis, Inuit, and other First Nation culture, heritage, and language will continue to be celebrated and reflected in the school system as part of the diversity of our society” (emphasis added). Without necessary context or direction on what a properly applied distinctions-based approach requires in relation to the celebration and reflection of the culture, heritage, and language of Métis, Inuit, and other First Nations in the school system, this communication could be interpreted as contradicting and undermining the DBA Primer, perpetuating the very pan-Indigenous approach we are working to correct. As we work with the Province to develop a companion document to the DBA Primer, the Province must not give unilateral specific guidance on what is and is not acceptable under a distinctions-based approach outside of what is explicitly stated in the DBA Primer, which should be shared directly with school districts in its entirety.

The Province cannot stay silent on the issue of Métis rights assertions and colonialism in BC. We request that ECC provide clear direction to boards of education to respect the inherent title, rights and authority of First Nations in whose territory(ies) they operate, and to refrain from entering into Métis education agreements that undermine the purpose and intent of the *School Act* amendments and the DBA Primer.


We are further requesting a meeting with you and your senior staff at the earliest opportunity to discuss next steps.



Sincerely,

**FIRST NATIONS LEADERSHIP COUNCIL**

**On behalf of the FIRST NATIONS SUMMIT**



Cheryl Casimer



Robert Phillips



Hugh Braker

**On behalf of the UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip



Chief Don Tom



Chief Marilyn Slett

**On behalf of the BC ASSEMBLY OF FIRST NATIONS:**



Regional Chief Terry Teegee

Cc: Christina Zacharuk, Deputy Minister of Education and Child Care, ECC  
Tyrone McNeil, President, FNEC  
Deborah Jeffrey, Executive Director, FNEC  
Denise Augustine, Superintendent of Indigenous Education, Ministry of  
Education and Child Care  
Brad Baker, Superintendent of Indigenous Education, Superintendent of Indigenous  
Education, Ministry of Education and Child Care



**RECEIVED**

2024 APR 11

April 11, 2024

Ref: 297731

Cheryl Casimer  
Robert Phillips  
Hugh Braker  
First Nations Summit  
Suite 1200 – 100 Park Royal South  
West Vancouver BC V7T 1A2

Grand Chief Stewart Phillip  
Chief Don Tom  
Chief Marilyn Slett  
Union of BC Indian Chiefs  
401-312 Main Street  
Vancouver BC V6A 2T2

Regional Chief Terry Teegee  
British Columbia Assembly of First Nations  
1004 Landooz Road  
Prince George BC V2K 5S3

Dear First Nations Leadership Council:

Thank you for your letter of March 18, 2024, regarding your concerns with the Ministry of Education and Child Care (the Ministry)'s implementation of a distinctions-based approach in the K-12 public education sector.

The Ministry is committed to ensuring that the sector appropriately reflects First Nations as inherent title and rights holders in BC, as per the [Distinctions-Based Approach Primer](#), and will reach out to your team to find a time that works for all of us to discuss this very important matter.

.../2

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**Ministry of Education  
and Child Care**

Office of the Minister

Mailing Address:  
PO Box 9045 Stn Prov Govt  
Victoria BC V8W 9E2

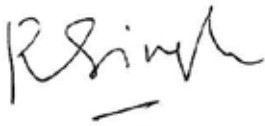
Location:  
Parliament Buildings  
Victoria



The Ministry recognizes that there is a diversity of understanding and expectations about the meaning of a distinctions-based approach and understands that not all rights are uniform or the same among or between all Indigenous Peoples. We are encouraged by the strong working relationship of co-construction we hold with First Nations Education Steering Committee, and we look forward to continuing this important conversation with the First Nations Leadership Council.

Again, thank you for writing.

Sincerely,



Rachna Singh  
Minister

cc: Tyrone McNeil, President, First Nations Education Steering Committee  
Deborah Jeffrey, Executive Director, First Nations Education Steering Committee  
Christina Zacharuk, Deputy Minister, Ministry of Education and Child Care  
Jennifer McCrea, Assistant Deputy Minister, System Liaison and Supports Division, Ministry of Education and Child Care  
Swee'alt (Denise Augustine), Superintendent of Indigenous Education, Ministry of Education and Child Care  
Tsonomot (Brad Baker), Associate Superintendent of Indigenous Education, Ministry of Education and Child Care  
Amber Shilling, Executive Director of Indigenous Education, System Liaison and Supports Division, Ministry of Education and Child Care

# OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS  
CHIEFS COUNCIL

JUNE 10<sup>TH</sup> – 11<sup>TH</sup>, 2024

SHXWHÁ:Y VILLAGE COMMUNITY CULTURAL CENTRE (STÓ:LŌ TERRITORY)

Resolution no. 2024-35

## RE: Implementing a Proper Distinctions-Based Approach in Public Education

**WHEREAS** First Nations in what is now known as British Columbia (B.C.) are the proper title and rights holders within our respective territories, with inherent, constitutional, and human rights, and with inherent laws, legal systems, systems of governance and jurisdictions which First Nations have applied and exercised throughout the entirety of our territories prior to contact, and which continue to exist and be applied and exercised throughout our territories today;

**WHEREAS** not all rights are uniform or the same among or between all Indigenous peoples and the extent to which they can be validly exercised depends on the context. A proper distinctions-based approach requires that the Crown governments' relationship and engagement with First Nations, Métis and Inuit individuals and organizations in B.C. must include different approaches or actions and result in different outcomes;

**WHEREAS** as a matter of self-determination, First Nations determine the expression and exercise of their rights, including rights to education, culture, and language;

**WHEREAS** First Nations' inherent laws, legal systems, systems of governance, and jurisdictions rightfully apply to all who have settled on and are guests within our territories in B.C., including Métis individuals and Métis organizations, and other Indigenous people from outside B.C. who choose to reside here;

**WHEREAS** the Métis Nation is an "aboriginal people of Canada" within the meaning of section 35 of the *Constitution Act, 1982* and an "indigenous people" within the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples*; however, the Métis Nation is not Indigenous to B.C. and Métis individuals are visitors to and settlers on the lands of First Nations in B.C.;

**WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., passed legislation committing to implement, affirms:

2024-35

Page 1 of 3

**Article 5:** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Article 14(1):** Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

**(2):** Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

**(3):** States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**Article 19:** States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;

**WHEREAS** the UBCIC Chiefs Council passed Resolution 2023-39 rejecting and denouncing Métis colonialism in British Columbia and the Crown’s past and ongoing facilitation of it along with Resolution 2024-07 rejecting the prioritization of Michif language classes in B.C.;

**WHEREAS** the government of B.C.’s Distinctions-Based Approach Primer (December 2023) affirms that the government of B.C.’s work with the Métis must occur in a manner which recognizes and respects the inherent, human, and constitutional rights of First Nations and upholds the laws, legal systems, and systems of government of First Nations;

**WHEREAS** when a right is asserted by an Indigenous person or group in the territory of another Indigenous Nation, its realization cannot impede or infringe the rights of that Nation and, further, the assertion of that right is contextualized and circumscribed by the fact that its exercise is being attempted in the territory of another Nation which holds title, rights, laws, legal orders, systems of governance, and jurisdiction;

**WHEREAS** as observed by the United Nations Expert Mechanism on the Rights of Indigenous Peoples, the right of Indigenous peoples to traditional education may be closely, and in some instances inseparably, associated with the use of their traditional lands, territories, and resources, and States must give legal recognition and protection to such lands, territories, and resources with due respect for Indigenous peoples’ customs, customary law, and traditions<sup>1</sup>;

**WHEREAS** provincial education policies must be transformed to apply a proper distinctions-based approach, to ensure that public education in B.C. is delivered in a manner that respects the primacy of local First Nations in whose territory(ies) boards of education operate schools, and to end harmful and racist pan-Indigenous approaches that do not distinguish between First Nation title and rights holders and those Indigenous individuals or groups from outside B.C. who choose to reside here;

**WHEREAS** so-called “Métis Education Agreements” between boards of education and Métis organizations are being entered into or contemplated in some school districts; however, they are contrary to the recent *School Act* amendments (Bill 40) and have been objected to by local First Nations in whose territories those boards of education operate;

**WHEREAS** the recent *School Act* (B.C.) amendments were intended to begin systemic shifts that include implementing a proper distinctions-based approach in provincial public K-12 education;

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<sup>1</sup> (United Nations General Assembly, August 31, 2009. “Study on lessons learned and challenges to achieve the implantation on the right of Indigenous peoples to education.” Human Rights Council, A/HRC/12/33)

**WHEREAS** a proper distinctions-based approach must be applied to the delivery of public education in First Nations' territories, including issues such as language, teacher standards, and the operation of Indigenous education councils, and proactive measures are needed to ensure proper training for teachers to understand and respect the world views and perspectives of First Nations in B.C.;

**WHEREAS** the government of B.C. committed in the 2022 Declaration Act Action Plan to a number of actions in relation to education including, the operation of Indigenous education councils, developing mechanisms to enable boards to better support Indigenous students, revitalization of languages, full course offerings in First Nation languages, and development of a K-12 First Nations Language policy (4.3, 4.4, 4.29, 4.31 and 4.32); and

**WHEREAS** all actions in the Declaration Act Action Plan must be implemented consistent with a proper distinctions-based approach.

**THEREFORE BE IT RESOLVED** the UBCIC Chiefs Council calls on the government of B.C. to work in consultation and cooperation with First Nations and the First Nations Education Steering Committee (FNESC) to implement a proper distinctions-based approach to the delivery of provincial K-12 public education that:

- respects the primacy of First Nations' title and rights holders within their respective territories in B.C., whose inherent laws, legal orders, systems of governance, and jurisdictions rightfully apply to all who have settled on and are guests within their territories, including the Métis;
- respects First Nations' own characterization, expression, and exercise of their rights, including rights to education, culture, and language, and does not in any way impose colonial definitions, conceptions, descriptions, explanations, characterizations, assumptions, or parameters on those rights;
- ends the harmful and racist pan-Indigenous approach that does not distinguish between First Nations title and rights holders in B.C. and those Indigenous peoples from outside B.C. who choose to reside here, including the Métis;

**THEREFORE BE IT FURTHER RESOLVED** the UBCIC Chiefs Council calls on the government of B.C. to commit that, in each school year, a board of education must schedule at least one non-instructional day for the purpose of providing teachers with an opportunity to participate in discussions and activities that focus both on improving First Nation student outcomes and attendance, and integrating the world views and perspectives of the First Nation(s) whose territory the school is located within, into learning environments; and

**THEREFORE BE IT FINALLY RESOLVED** the UBCIC Chiefs Council affirms that when a right is asserted by an Indigenous person or group from outside B.C. in the territories of First Nations in BC:

- its realization cannot impede or infringe the title, rights, laws, legal orders, systems of governance, or jurisdiction of the First Nation in whose territory it is asserted; and
- its assertion is necessarily contextualized and circumscribed by the fact that the First Nation in whose territory it is asserted has title, rights, laws, legal orders, systems of governance or jurisdiction which apply to guests to that territory.

**Moved:** Chief Don Tom, Tsartlip First Nation  
**Seconded:** Kukpi Lee Spahan, Coldwater Indian Band  
**Disposition:** Carried  
**Date:** June 11, 2024



# UNION OF BC INDIAN CHIEFS

OUR LAND IS OUR FUTURE

August 7, 2024

Hon. Rachna Singh  
Minister of Education and Child Care  
Government of British Columbia  
Via Email Only: [ECC.Minister@gov.bc.ca](mailto:ECC.Minister@gov.bc.ca)

## **RE: UBCIC Resolution 2024-35 “Implementing a Proper Distinctions-Based Approach in Public Education”**

Dear Minister Singh,

We are writing with respect to Union of B.C. Indian Chiefs (UBCIC) Resolution 2024-35 “Implementing a Proper Distinctions-Based Approach in Public Education” which was presented, affirmed, and endorsed unanimously at the UBCIC Chiefs Council on June 11, 2024 (enclosed).

By Resolution 2024-35, the UBCIC Chiefs Council calls on the government of B.C. to work in consultation and cooperation with First Nations and the First Nations Education Steering Committee (FNESC) to implement a proper distinctions-based approach to the delivery of provincial K-12 public education that:

- respects the primacy of First Nations’ title and rights holders within their respective territories in B.C., whose inherent laws, legal orders, systems of governance, and jurisdictions rightfully apply to all who have settled on and are guests within their territories, including the Métis;
- respects First Nations’ own characterization, expression, and exercise of their rights, including rights to education, culture, and language, and does not in any way impose colonial definitions, conceptions, descriptions, explanations, characterizations, assumptions, or parameters on those rights;
- ends the harmful and racist pan-Indigenous approach that does not distinguish between First Nations title and rights holders in B.C. and those Indigenous peoples from outside B.C. who choose to reside here, including the Métis;

Further, the UBCIC Chiefs Council calls on the government of B.C. to commit that, in each school year, a board of education must schedule at least one non-instructional day for the purpose of providing teachers with an opportunity to participate in discussions and activities that focus both on improving First Nation student outcomes and attendance, and integrating the world views and perspectives of the First Nation(s) whose territory the school is located within, into learning environments.

Finally, the UBCIC Chiefs Council affirms that when a right is asserted by an Indigenous person or group from outside B.C. in the territories of First Nations in BC:

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# UNION OF BC INDIAN CHIEFS

OUR LAND IS OUR FUTURE

- its realization cannot impede or infringe the title, rights, laws, legal orders, systems of governance, or jurisdiction of the First Nation in whose territory it is asserted; and
- its assertion is necessarily contextualized and circumscribed by the fact that the First Nation in whose territory it is asserted has title, rights, laws, legal orders, systems of governance or jurisdiction which apply to guests to that territory.

We look forward to your response.

**On behalf of the UNION OF BC INDIAN CHIEFS**

Grand Chief Stewart Phillip  
President

Chief Don Tom  
Vice-President

Chief Marilyn Slett  
Secretary-Treasurer

CC: UBCIC Chiefs Council  
Ministry of Indigenous Relations and Reconciliation  
First Nations Education Steering Committee  
BC School Boards  
District/Authority Scholarships

Encl: UBCIC Resolution 2024-35

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September 4, 2024

Ref: 301097

Grand Chief Stewart Phillip, President  
Chief Don Tom, Vice-President  
Chief Marilyn Slett, Secretary-Treasurer  
Union of BC Indian Chiefs  
**Email: [epennell@ubcic.bc.ca](mailto:epennell@ubcic.bc.ca)**

Dear Grand Chief Stewart Phillip, Chief Don Tom, and Chief Marilyn Slett:

Thank you for your letter of August 7, 2024, regarding the Union of BC Indian Chiefs Resolution 2024-35 “Implementing a Proper Distinctions-Based Approach in Public Education”.

Both the Province and the Ministry of Education and Child Care are committed to a distinctions-based approach. The Ministry also recognizes that there is a diversity of understanding and expectations about the meaning of a distinctions-based approach and understands that not all rights are uniform or the same among or between all Indigenous Peoples. We are committed to ensuring that the sector appropriately reflects First Nations as inherent title and rights holders in BC, as per the Distinctions-Based Approach Primer.

The passing of Bill 40, the *School Amendment Act*, in November 2023, introduced a provincial standard for Indigenous Education Councils to ensure that boards of education meaningfully engage with First Nations, Treaty Nations, and Indigenous communities, and that Indigenous peoples have input into decisions affecting Indigenous students. The *School Amendment Act*, Ministerial Order, policy and terms of reference were all co-developed with the First Nations Education Steering Committee. The work to implement this legislation with a distinctions-based approach is ongoing.

The British Columbia Tripartite Education Agreement (BCTEA) was signed in 2018 and has been extended until 2025 by parties to the Agreement: the First Nations Education Steering Committee, the Ministry of Education and Child Care, and Indigenous Services Canada. In alignment with the BCTEA, the Indigenous focused non-instructional day, for the purpose of focusing on enhancing Indigenous student achievement and integrating Indigenous worldviews and perspectives into learning environments, will continue for the 2024/25 school year.

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**Ministry of Education  
and Child Care**

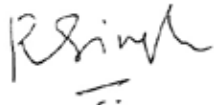
Office of the Minister

Mailing Address:  
PO Box 9045 Stn Prov Govt  
Victoria BC V8W 9E2

Location:  
Parliament Buildings  
Victoria

The Ministry looks forward to continued conversations with the First Nations Leadership Council and the First Nations Education Steering Committee.

Sincerely,



Rachna Singh  
Minister

cc: Honourable Murray Rankin, Minister of Indigenous Relations and Reconciliation  
Christina Zacharuk, Deputy Minister, Ministry of Education and Child Care  
Jennifer McCrea, Assistant Deputy Minister, System Liaison and Supports Division,  
Ministry of Education and Child Care  
Tsnomot (Brad Baker), Superintendent of Indigenous Education, Ministry of Education  
and Child Care  
Leona Prince, Assistant Superintendent of Indigenous Education, Ministry of  
Education and Child Care  
Amber Shilling, Executive Director of Indigenous Education, System Liaison and  
Supports Division, Ministry of Education and Child Care  
Tyrone McNeil, President, First Nations Education Steering Committee  
Deborah Jeffrey, Executive Director, First Nations Education Steering Committee



# First Nations Summit

## RESOLUTION #0624.04

### SUBJECT: IMPLEMENTING A PROPER DISTINCTIONS-BASED APPROACH IN PUBLIC EDUCATION

#### WHEREAS:

- A. First Nations are the proper title and rights holders within our respective territories, with inherent, constitutional, and human rights, and with inherent laws, legal systems, systems of governance and jurisdictions which First Nations have applied and exercised throughout the entirety of our territories prior to contact, and which continue to exist and be applied and exercised throughout the entirety of our territories today.
- B. Not all rights are uniform or the same among or between all Indigenous peoples and the extent to which they can be exercised depends on various factors.
- C. A proper distinctions-based approach requires that the Crown governments' relationship and engagement with First Nations, Métis and Inuit individuals and organizations in BC must include different approaches or actions and result in different outcomes.
- D. As a matter of self-determination, First Nations' determine the expression and exercise of their rights, including rights to education, culture and language.
- E. First Nations' inherent laws, legal systems, systems of governance, and jurisdictions rightfully apply to all who have settled on and are guests within our territories, including the Métis people, Métis individuals, and Métis organizations, and other Indigenous people who choose to reside in what is now referred to as BC.
- F. While the Métis Nation is an "aboriginal people of Canada" within the meaning of section 35 of the *Constitution Act*, 1982 and an "indigenous people" within the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples*, the Métis Nation is not indigenous to BC and Métis individuals are visitors to, and settlers on, the lands of First Nations in BC.
- G. The *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of BC, committed to implement, states that:

**Article 5:** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

**Article 14(1):** Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

**Article 14(2):** Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

**(3):** States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

**Article 19:** States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

- H. By Resolution #0623.06, the First Nations Summit Chiefs in Assembly rejected and denounced the past and continuing false, unfounded, and offensive assertions of the Métis of land and water-based inherent and constitutionally protected rights in BC and related jurisdiction.
- I. The Province of BC's Distinctions-Based Approach Primer (December 2023) affirms that the Province's work with the Métis must occur in a manner which recognizes the inherent, human, and constitutional rights of First Nations and upholds the laws, legal systems, and systems of government of First Nations.
- J. When a right is asserted by an Indigenous person or group in the territory of another Indigenous Nation, its realization cannot impede or infringe the rights of that Nation and, further, the assertion of that right is contextualized and circumscribed by the fact that it is in the territory of another Nation which holds title, rights, laws, legal orders, systems of governance, and jurisdiction.
- K. As observed by the United Nations General Assembly, the right of Indigenous peoples to traditional education may be closely, and in some instances inseparably, associated with the use of their traditional lands, territories and natural resources. States must give legal recognition and protection to such lands, territories and resources with due respect for Indigenous peoples' customs, customary law and traditions. (United Nations General Assembly, August 31, 2009. "Study on lessons learned and challenges to achieve the implantation on the right of Indigenous peoples to education." Human Rights Council, A/HRC/12/33).
- L. Provincial education policies must be transformed to apply a proper distinctions-based approach, ensure that public education in BC is delivered in a manner that respects the primacy of local First Nations in whose territory(ies) boards of education operate schools, and end harmful and racist pan-Indigenous approaches that do not distinguish between First Nation title and rights holders and those Indigenous persons from outside BC who choose to reside here.
- M. So-called "Métis Education Agreements" between boards of education and Métis organizations are being entered into or contemplated in some school districts; however, they are contrary to the recent School Act amendments (Bill 40) and have been objected to by local First Nations in whose territories those boards of education operate.

**PAGE THREE**

**RESOLUTION #0624.04**

**SUBJECT: IMPLEMENTING A PROPER DISTINCTIONS-BASED APPROACH IN PUBLIC EDUCATION**

- N. The recent *School Act* (BC) amendments were intended to begin systemic shifts that include implementing a proper distinctions-based approach in provincial public K-12 education.
- O. A proper distinctions-based approach must be applied to the delivery of public education in First Nations' territories, including issues such as language, teacher standards, and the operation of Indigenous education councils, and proactive measures are needed to ensure proper training for teachers to understand and respect the world views and perspectives of First Nations in BC.
- P. The Province committed in the 2022 Declaration Act Action Plan to a number of actions in relation to education including the operation of Indigenous education councils, developing mechanisms to enable boards to better support Indigenous students, revitalization of languages, full course offerings in First Nation languages, and development of a K-12 First Nations Language policy (4.3, 4.4, 4.29, 4.31 and 4.32).
- Q. All actions in the Declaration Act Action Plan must be implemented consistent with a proper distinctions-based approach.
- R. A similarly worded resolution was approved at a recent June 2024 UBCIC Chiefs Council meeting.

**THEREFORE, BE IT RESOLVED:**

- 1. That the First Nations Summit Chiefs in Assembly call on the Province of British Columbia to work with First Nations and the First Nations Education Steering Committee to implement a proper distinctions-based approach to the delivery of provincial K-12 public education that:
  - a. respects the primacy of First Nations' title and rights holders within their respective territories, whose inherent laws, legal orders, systems of governance, and jurisdictions rightfully apply to Métis and all who have settled on, and are guests within, First Nations' territories;
  - b. respects First Nations' own characterization, expression, and exercise of their rights, including rights to education, culture, and language, and does not in any way impose colonial definitions, conceptions, descriptions, explanations, characterizations, or parameters on those rights; and
  - c. ends the harmful and racist pan-Indigenous approach that does not distinguish between First Nations title and rights holders in what is now known as BC and those Indigenous peoples from outside BC who choose to reside here, including the Métis.
- 2. That the First Nations Summit Chiefs in Assembly call on the government of BC to commit that, in each school year, a board of education must schedule at least one non-instructional day for the purpose of providing teachers with an opportunity to participate in discussions and activities that focus both on improving First Nation student outcome and attendance, and integrating world views and perspectives of the First Nation(s) whose territory the school is located within, into learning environments.

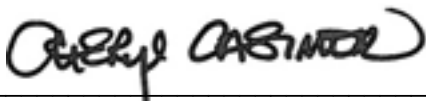
**PAGE FOUR**  
**RESOLUTION #0624.04**  
**SUBJECT: IMPLEMENTING A PROPER DISTINCTIONS-BASED APPROACH IN PUBLIC EDUCATION**


3. That the First Nations Summit Chiefs in Assembly affirm that when a right is asserted by an Indigenous person or group while in the territories of original First Nations in BC:
- a. its realization cannot impede or infringe the title, rights, laws, legal orders, systems of governance, or jurisdiction of the original First Nation in whose territory it is asserted, and
  - b. its assertion is necessarily contextualized and circumscribed by the fact that the First Nation in whose territory it is asserted has title, rights, laws, legal orders, systems of governance or jurisdiction which apply to guests to that territory.

**MOVED BY:** Robert Morales, Hul'qumi'num Treaty Group  
**SECONDED BY:** Kukpi7 Helen Henderson, Tsqéscen First Nation  
**DATED:** June 27, 2024

Passed by consensus.

**ENDORSED BY:**

  
Cheryl Casimer

  
Robert Phillips

  
Hugh Braker

# OUR LAND IS OUR FUTURE

UNION OF BRITISH COLUMBIA INDIAN CHIEFS

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Web: [www.ubcic.bc.ca](http://www.ubcic.bc.ca)

UNION OF B.C. INDIAN CHIEFS  
CHIEFS COUNCIL  
FEBRUARY 21<sup>ST</sup> – 22<sup>ND</sup>, 2024  
VIRTUAL MEETING

Resolution no. 2024-07

**RE: Resolution to Reject the Prioritization of Michif Language Classes in B.C. Schools**

**WHEREAS** First Nations languages and cultures are one and the same and comprise the core of First Nations identities and Nationhood;

**WHEREAS** First Nations languages are granted to us by our Creator and every First Nations child has the right to acquire the knowledge skills to survive, in their respective First Nations language;

**WHEREAS** First Nations in BC are the proper title and rights holders within our territories, who hold inherent, constitutional, and human rights, and inherent laws, legal systems, systems of governance, and jurisdictions, which First Nations have applied and exercised throughout the entirety of our territories prior to contact, and which continue to exist and be applied and exercised throughout the entirety of our territories today;

**WHEREAS** the Métis Nation is an “indigenous people” within the meaning of the *United Nations Declaration on the Rights of Indigenous Peoples* and an “aboriginal people of Canada” within the meaning of section 35 of the *Constitution Act, 1982*, however the Métis Nation is not Indigenous to BC and Métis individuals are visitors to and settlers on the lands of First Nations in B.C.;

**WHEREAS** not all rights of Indigenous peoples are uniform or the same, rather they are diverse, distinct, and contextual under both domestic Canadian law and international law, arising from and in relation to their unique histories, circumstances, laws, legal systems, and systems of governance, and the scope of rights enjoyed by an Indigenous People is also contextual;

**WHEREAS** the *Indigenous Languages Act*, SC 2019 c 23 recognizes that the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982* include rights related to Indigenous languages;

2024-07

Page 1 of 2

**WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., passed legislation committing to implement, affirms:

**Article 13(1):** Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

**Article 14(1):** Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

**(2):** Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

**(3):** States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language;

**WHEREAS** the UBCIC Chiefs Council is aware that discussions have been occurring about schools in B.C. offering Michif language courses, and that some schools in B.C. may already be offering such courses; and

**WHEREAS** the Métis Nation has inherent and constitutionally protected rights related to their languages, including Michif, but those rights cannot and must not be prioritized over the inherent and constitutionally protected language-related rights of First Nations in B.C.

**THEREFORE BE IT RESOLVED** that the UBCIC Chiefs Council rejects the prioritization of Michif language classes in B.C. schools over those of First Nations, and affirms that Michif language classes must only be established and implemented in B.C. schools once the language classes of those First Nations whose territories the schools are located in are sufficiently and predictably funded and properly established, and those First Nations have confirmed that such classes are sufficiently and predictably funded and properly established;

**THEREFORE BE IT FURTHER RESOLVED** the UBCIC Chiefs Council affirms that any funding provided by the provincial, federal, or other Crown governments for the establishment and implementation of Michif language classes in B.C. schools must not diminish or reduce language-related funding for First Nations in B.C.;

**THEREFORE BE IT FURTHER RESOLVED** that the UBCIC Chiefs Council directs the UBCIC Executive and staff to raise this issue with the Ministry of Education, the British Columbia School Trustee Association, and other relevant entities to reject the prioritization of Michif language classes in B.C. Schools; and

**THEREFORE BE IT FINALLY RESOLVED** that the UBCIC Chiefs Council continues to invite collaboration with Indigenous organizations on matters of anti-racism and social and health improvement initiatives, where this collaboration is properly grounded in historic reality and available evidence and respect for First Nations title and rights holders in B.C., and where past and ongoing transgressions by those organizations are acknowledged and satisfactorily remedied.

**Moved:** Councillor Marie Baptiste, Tk'emlúps te Secwépemc (Proxy)

**Seconded:** Chief Arnold Lampreau, Shackan Indian Band

**Disposition:** Carried

**Date:** February 21, 2024

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2024-07

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# UNION OF BC INDIAN CHIEFS

OUR LAND IS OUR FUTURE

April 2, 2024

Hon. Rachna Singh  
Minister of Education and Child Care  
Government of British Columbia  
Via Email Only: [ECC.Minister@gov.bc.ca](mailto:ECC.Minister@gov.bc.ca)

Carolyn Broady  
President  
British Columbia School Trustees Association  
Via Email Only: [cbroady@bcsta.org](mailto:cbroady@bcsta.org)

Hon. Gary Anandasangaree  
Minister of Crown Indigenous Relations and Northern  
Affairs Canada  
Government of Canada  
Via Email Only: [gary.anand@parl.gc.ca](mailto:gary.anand@parl.gc.ca)

## **RE: UBCIC Resolution 2024-07 “Resolution to Reject the Prioritization of Michif Language Classes in B.C. Schools”**

Dear Minister Singh, Minister Anandasangaree, and President Broady,

We are writing with respect to Union of BC Indian Chiefs (UBCIC) Resolution 2024-07 “Resolution to Reject the Prioritization of Michif Language Classes in B.C. Schools” which was presented, affirmed, and endorsed by consensus at the UBCIC Chiefs Council on February 21, 2024 (enclosed).

By Resolution 2024-07, the UBCIC Chiefs Council directs the UBCIC Executive and staff to raise this issue with the Ministry of Education, the British Columbia School Trustee Association, and other relevant entities to reject the prioritization of Michif language classes in B.C. Schools.

The UBCIC Chiefs Council rejects the prioritization of Michif language classes in B.C. schools over those of First Nations, and affirms that Michif language classes must only be established and implemented in B.C. schools once the language classes of those First Nations whose territories the schools are located in are sufficiently and predictably funded and properly established, and those First Nations have confirmed that such classes are sufficiently and predictably funded and properly established.

Further, the UBCIC Chiefs Council affirms that any funding provided by the provincial, federal, or other Crown governments for the establishment and implementation of Michif language classes in B.C. schools must not diminish or reduce language-related funding for First Nations in B.C.

The UBCIC Chiefs Council continues to invite collaboration with Indigenous organizations on matters of anti-racism and social and health improvement initiatives, where this collaboration is properly grounded in historic reality and available evidence and respect for First Nations title and rights holders in B.C., and where past and ongoing transgressions by those organizations are acknowledged and satisfactorily remedied.

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[www.ubcic.bc.ca](http://www.ubcic.bc.ca)

**WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of B.C., passed legislation committing to implement, affirms:

**Article 13(1):** Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

**Article 14(1):** Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

**(2):** Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

**(3):** States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language;

**WHEREAS** the UBCIC Chiefs Council is aware that discussions have been occurring about schools in B.C. offering Michif language courses, and that some schools in B.C. may already be offering such courses; and

**WHEREAS** the Métis Nation has inherent and constitutionally protected rights related to their languages, including Michif, but those rights cannot and must not be prioritized over the inherent and constitutionally protected language-related rights of First Nations in B.C.

**THEREFORE BE IT RESOLVED** that the UBCIC Chiefs Council rejects the prioritization of Michif language classes in B.C. schools over those of First Nations, and affirms that Michif language classes must only be established and implemented in B.C. schools once the language classes of those First Nations whose territories the schools are located in are sufficiently and predictably funded and properly established, and those First Nations have confirmed that such classes are sufficiently and predictably funded and properly established;

**THEREFORE BE IT FURTHER RESOLVED** the UBCIC Chiefs Council affirms that any funding provided by the provincial, federal, or other Crown governments for the establishment and implementation of Michif language classes in B.C. schools must not diminish or reduce language-related funding for First Nations in B.C.;

**THEREFORE BE IT FURTHER RESOLVED** that the UBCIC Chiefs Council directs the UBCIC Executive and staff to raise this issue with the Ministry of Education, the British Columbia School Trustee Association, and other relevant entities to reject the prioritization of Michif language classes in B.C. Schools; and

**THEREFORE BE IT FINALLY RESOLVED** that the UBCIC Chiefs Council continues to invite collaboration with Indigenous organizations on matters of anti-racism and social and health improvement initiatives, where this collaboration is properly grounded in historic reality and available evidence and respect for First Nations title and rights holders in B.C., and where past and ongoing transgressions by those organizations are acknowledged and satisfactorily remedied.

**Moved:** Councillor Marie Baptiste, Tk'emlúps te Secwépemc (Proxy)

**Seconded:** Chief Arnold Lampreau, Shackan Indian Band

**Disposition:** Carried

**Date:** February 21, 2024

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2024-07

Page 2 of 2





July 12, 2024

Ref: 297962

Grand Chief Stewart Phillip, President  
Chief Don Tom, Vice-President  
Chief Marilyn Slett, Secretary Treasurer  
Union of BC Indian Chiefs  
**Email: [epennell@ubcic.bc.ca](mailto:epennell@ubcic.bc.ca)**

Dear Grand Chief Stewart Phillip, Chief Don Tom, and Chief Marilyn Slett:

Thank you for your letter of April 2, 2024, regarding the Union of BC Indian Chiefs' February 2024 resolution to reject the prioritization of Michif language classes in British Columbia schools. I apologize for the lengthy delay in responding.

The Ministry of Education and Child Care remains committed to increasing the presence of Indigenous languages, culture, and history for BC students, and ensuring that the public education sector appropriately reflects First Nations as inherent title and rights holders in BC, as per the [Distinctions-Based Approach Primer](#).

The passing of Bill 40, the *School Amendment Act*, in November 2023, introduced a provincial standard for Indigenous Education Councils to ensure that boards of education meaningfully engage with First Nations, Treaty First Nations, and Indigenous communities, and that Indigenous peoples have input into decisions affecting Indigenous students. The work to implement this legislation with a distinctions-based approach is ongoing.

The Ministry continues to hold conversations around the application of a distinctions-based approach with the First Nations Leadership Council and the First Nations Education Steering Committee and we will ensure that this resolution is part of our ongoing discussions.

Again, thank you for writing.

Sincerely,

Rachna Singh  
Minister

.../2

**Ministry of Education  
and Child Care**

Office of the Minister

Mailing Address:  
PO Box 9045 Stn Prov Govt  
Victoria BC V8W 9E2

Location:  
Parliament Buildings  
Victoria

cc: Honourable Gary Anandasangaree, Minister of Crown Indigenous Relations and  
Northern Affairs Canada, Government of Canada  
Honourable Murray Rankin, Minister of Indigenous Relations and Reconciliation  
Christina Zacharuk, Deputy Minister, Ministry of Education and Child Care  
Jennifer McCrea, Assistant Deputy Minister, System Liaison and Supports Division,  
Ministry of Education and Child Care  
Swee'alt (Denise Augustine), Superintendent of Indigenous Education, Ministry of  
Education and Child Care  
Tsnomot (Brad Baker), Associate Superintendent of Indigenous Education, Ministry of  
Education and Child Care  
Amber Shilling, Executive Director of Indigenous Education, System Liaison and  
Supports Division, Ministry of Education and Child Care  
Tyrone McNeil, President, First Nations Education Steering Committee  
Deborah Jeffrey, Executive Director, First Nations Education Steering Committee  
Carolyn Broady, President, BC Schools Trustees Association



## BC ASSEMBLY OF FIRST NATIONS

1004 Landooz Road  
Prince George, BC V2K 5S3  
Website: [www.bcafn.ca](http://www.bcafn.ca)

**BCAFN ANNUAL GENERAL MEETING**  
**September 21, 22, & 23, 2022**  
**Hybrid - In person & online via Zoom**

**Resolution 20/2022**

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**SUBJECT:** **DISTINCTIONS BASED APPROACH TO RECOGNITION AND IMPLEMENTATION  
OF THE INHERENT RIGHTS OF FIRST NATIONS PEOPLES AND GOVERNMENTS**

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**MOVED BY:** **KUKPI7 JUDY WILSON, NESKONLITH INDIAN BAND**

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**SECONDED BY:** **CHIEF DON TOM, TSARTLIP FIRST NATION**

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**DECISION:** **CARRIED**

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**WHEREAS:**

- A. the historical actions illegally undertaken by the colonial government of British Columbia (BC) and successive governments of Canada have resulted in the dispossession of First Nations, including the illegal alienation of our lands; the failure to protect Indian reserves, villages, hunting, fishing & harvesting areas; the systematic denial of rights to fish and access to water; and the illegal disruption and removal of sacred sites, land use and occupancy structures & areas and grave sites;
- B. these historical losses and the ongoing fallout and harm caused to First Nations are the result of fictional, racist concepts such as *terra nullius* and the *doctrines of discovery, domination and denial* which provided colonial and Canadian governments justification for alienating land through organized systems of pre-emption and land grants to accelerate non-Indigenous settlement on Indigenous lands and territories, and later through systems of land alienation legalized and exploited under the *Indian Act* and often in clear violation of the minimal protections contained in colonial or federal law;

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**Certified copy of a resolution adopted on the 21<sup>st</sup> day of September 2022**

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**Terry Teegee, BC Regional Chief**

- C. redress of these historical wrongs is necessary through recognition of the rights of First Nations, including territorial and marine or water rights, and respectful and legally sound processes for resolving conflicts arising from the denial of rights era. Furthermore, Canada's lawful obligation and the honour of the Crown necessitates just action on the part of the federal and provincial governments, that takes into account the key distinctions between First Nations and Metis and does not lump together Indigenous peoples for convenience as this is confusing, degrading and recreates further colonial difficulties;
- D. the rights of First Nations, as the territorial rights holders, are distinct from those of the Metis in British Columbia as a matter of law and principle and this has been recognized in jurisprudence, constitutional law and through the application of international human rights and customary law'
- E. the provincial government's relationship and engagement with First Nations, Métis and Inuit peoples will require different approaches to the substance and the process of reconciliation so that it is meaningful, accurate and responds to the distinct circumstances of First Nations, and does not create new rights by extension to those who never had such rights;
- F. grouping all Indigenous peoples together in government policies and approaches, without proper regard for distinctions between peoples who each have their own unique cultures, histories, rights, territories, laws, and governments, is inappropriate and not consistent with constitutional law or international human rights law, including the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration).
- G. all policy must be based on the recognition that First Nations were the pre-existing societies using and occupying lands and resources prior to contact and who have inherent Title and Rights and constitutionally protected rights in relation to their lands and resources, and international legal protections in the UN Declaration that require governments recognize and align their work properly with a distinctions-based approach. There must also be recognition that there are distinctions among individual and distinct First Nations, such as those who are inherent Title and Rights holders as well as those who are Treaty and Modern Treaty Nations.
- H. a distinctions-based approach recognizes that Indigenous peoples and their rights are distinct, and all matters engaging lands and resources give rise to legal obligations owing to First Nations, and this must be a priority to resolve colonial conflicts. Furthermore, the Métis are not first peoples in British Columbia with a territory or scope of rights in any way equivalent or similar to First Nations, as Métis rights and presence in British Columbia occurred after colonization and settlement;
- I. the UN Declaration, which the government of Canada has adopted without qualification, and has, alongside the government of British Columbia committed to implement, affirms:

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**Certified copy of a resolution adopted on the 21<sup>st</sup> day of September 2022**



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**Terry Teegee, BC Regional Chief**

**Article 8(2):** States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration.

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 26(1):** Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired;  
**(2)** Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired;  
**(3)** States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Article 27:** States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Article 28(1):** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. **(2):** Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress; and

- J. all governments must explicitly have policies that acknowledge and take into account distinctions through the application of a distinctions-based approach when reviewing or aligning laws, policies and practices with UN Declaration and the rights and interests of diverse and distinct Indigenous peoples, including First Nations in BC, in line with the federal *UN Declaration on the Rights of Indigenous Peoples Act* and the provincial *Declaration on the Rights of Indigenous Peoples Act* which impose an obligation to do so.

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**Certified copy of a resolution adopted on the 21<sup>st</sup> day of September 2022**



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**Terry Teegee, BC Regional Chief**

**THEREFORE BE IT RESOLVED THAT:**

1. the BCAFN Chiefs-in-Assembly calls upon all governments to adopt a distinctions-based approach to ensure the distinct rights, interests, histories, and contexts of First Nations as the first occupants and owners of their respective territories are recognized, while also ensuring that there is a recognition that First Nations, as territorial rights holders in British Columbia (BC), are distinct from Métis and/or other Indigenous peoples who are visitors to our territories;
2. the BCAFN Chiefs-in-Assembly calls upon all governments to work with the BCAFN, working alongside the Union of BC Indian Chiefs and the First Nations Summit as the First Nations Leadership Council to co-develop and affirm a distinctions-based approach in all of its work to recognize, affirm, implement and respect the rights of First Nations; and
3. the BCAFN Chiefs-in-Assembly directs the Regional Chief and staff to seek funding and/or necessary resources to advocate for and assist in the development of a distinctions-based policy to all aspects of action planning on the implementation of the UN Declaration at the federal, provincial and municipal levels of government that is reflective of the distinctions among Indigenous peoples in order to strengthen future policy and law making.

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**Certified copy of a resolution adopted on the 21<sup>st</sup> day of September 2022**

A handwritten signature in blue ink, appearing to read 'Terry Teegee', is positioned above a horizontal line.

**Terry Teegee, BC Regional Chief**

# OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS  
54<sup>TH</sup> ANNUAL GENERAL ASSEMBLY  
SEPTEMBER 27<sup>TH</sup> TO 29<sup>TH</sup>, 2022  
MUSQUEAM COMMUNITY CENTRE, xʷməθkʷəy̓əm (MUSQUEAM TERRITORY)

Resolution no. 2022-55

**RE: Distinctions Based Approach to Recognition and Implementation of the Inherent Rights of First Nations Peoples and Governments**

**WHEREAS** the historical actions illegally undertaken by the colonial government of British Columbia and successive governments of Canada have resulted in the dispossession of First Nations, including the illegal alienation of our lands; the failure to protect Indian reserves, villages, hunting, fishing & harvesting areas; the systematic denial of rights to fish and access to water; and the illegal disruption and removal of sacred sites, land use and occupancy structures & areas and grave sites;

**WHEREAS** these historical losses and the ongoing fallout and harm caused to First Nations are the result of fictional, racist concepts such as *terra nullius* and the *doctrines of discovery, domination and denial* which provided colonial and Canadian governments justification for alienating land through organized systems of pre-emption and land grants to accelerate non-Indigenous settlement on Indigenous lands and territories, and later through systems of land alienation legalized and exploited under the *Indian Act* and often in clear violation of the minimal protections contained in colonial or federal law;

**WHEREAS** redress of these historical wrongs is necessary through recognition of the rights of First Nations, including territorial and marine or water rights, and respectful and legally sound processes for resolving conflicts arising from the denial of rights era. Furthermore, Canada's lawful obligation and the honour of the Crown necessitates just action on the part of the federal and provincial governments, that takes into account the key distinctions between First Nations and Metis and does not lump together

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Indigenous peoples for convenience as this is confusing, degrading and recreates further colonial difficulties;

**WHEREAS** the rights of First Nations, as the territorial rights holders, are distinct from those of the Métis in British Columbia as a matter of law and principle and this has been recognized in jurisprudence, constitutional law and through the application of international human rights and customary law;

**WHEREAS** the provincial government's relationship and engagement with First Nations, Métis and Inuit peoples will require different approaches to the substance and the process of reconciliation so that it is meaningful, accurate and responds to the distinct circumstances of First Nations, and does not create new rights by extension to those who never had such rights;

**WHEREAS** grouping all Indigenous peoples together in government policies and approaches, without proper regard for distinctions between peoples who each have their own unique cultures, histories, rights, territories, laws, and governments, is inappropriate and not consistent with constitutional law or international human rights law, including the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration);

**WHEREAS** all policy must be based on the recognition that First Nations were the pre-existing societies using and occupying lands and resources prior to contact and who have inherent Title and Rights and constitutionally protected rights in relation to their lands and resources, and international legal protections in the UN Declaration that require governments recognize and align their work properly with a distinctions-based approach. There must also be recognition that there are distinctions among individual and distinct First Nations, such as those who are inherent Title and Rights holders as well as those who are Treaty and Modern Treaty Nations;

**WHEREAS** a distinctions-based approach recognizes that Indigenous peoples and their rights are distinct, and all matters engaging lands and resources give rise to legal obligations owing to First Nations, and this must be a priority to resolve colonial conflicts. Furthermore, the Métis are not first peoples in British Columbia with a territory or scope of rights in any way equivalent or similar to First Nations, as Métis rights and presence in British Columbia occurred after colonization and settlement;

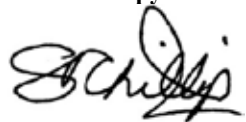
**WHEREAS** the UN Declaration, which the government of Canada has adopted without qualification, and has, alongside the government of British Columbia committed to implement, affirms:

**Article 8(2):** States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration.

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed

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consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 26(1):** Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired;

**(2):** Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired;

**(3):** States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Article 27:** States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Article 28(1):** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

**(2):** Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress; and

**WHEREAS** all governments must explicitly have policies that acknowledge and take into account distinctions through the application of a distinctions-based approach when reviewing or aligning laws, policies and practices with UN Declaration and the rights and interests of diverse and distinct Indigenous peoples, including First Nations in BC, in line with the federal *UN Declaration on the Rights of Indigenous Peoples Act* and the provincial *Declaration on the Rights of Indigenous Peoples Act* which impose an obligation to do so.

**THEREFORE BE IT RESOLVED** the UBCIC Chiefs-in-Assembly call upon all governments to adopt a distinctions-based approach to ensure the distinct rights, interests, histories, and contexts of First Nations as the first occupants and owners of their respective territories are recognized, while also ensuring that there is a recognition that First Nations, as territorial rights holders in BC, are distinct from Métis and/or other Indigenous peoples who are visitors to our territories;

**THEREFORE BE IT FURTHER RESOLVED** the UBCIC Chiefs-in-Assembly call upon all governments to work with the UBCIC, working alongside the BC Assembly of First Nations and First Nations Summit as the First Nations Leadership Council, to co-develop and affirm a distinctions-based approach in all of its work to recognize, affirm, implement and respect the rights of First Nations; and

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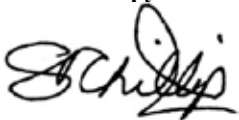
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**THEREFORE BE IT FINALLY RESOLVED** the UBCIC Chiefs-in-Assembly direct the UBCIC Executive and staff to seek funding and/or necessary resources to advocate for and assist in the development of a distinctions-based policy to all aspects of action planning on the implementation of the UN Declaration at the federal, provincial and municipal levels of government that is reflective of the distinctions among Indigenous peoples in order to strengthen future state-led policy and law making.

**Moved:** Kúkpi7 James Hobart, Spuzzum First Nation  
**Seconded:** Chief Ralph Leon, Sts'ailes  
**Disposition:** Carried  
**Date:** September 28, 2022

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UNION OF B.C. INDIAN CHIEFS  
54<sup>TH</sup> ANNUAL GENERAL ASSEMBLY  
SEPTEMBER 27<sup>TH</sup> TO 29<sup>TH</sup>, 2022  
MUSQUEAM COMMUNITY CENTRE, x̱m̱əθḵw̱əy̱əm (MUSQUEAM TERRITORY)

Resolution no. 2022-54

**RE: Advocating for Inclusive and Distinctions-Based Engagement with First Nations in BC**

**WHEREAS** as Indigenous peoples, our identity is defined by our connections to our territories, to each other, to our neighbouring nations, and to the other life we share our living world with. We are the original people of this land. We have the human right to survive as distinct peoples, contributing to the global fabric of nations into the future;

**WHEREAS** First Nations are distinct from Métis and Inuit peoples. There are also distinctions between those First Nations who are inherent Title and Rights holders and First Nations who are Treaty rights holders. Treaty First Nations are also distinct based on their specific historic or modern Treaty;

**WHEREAS** distinctions and respective Crown obligations owed under such distinctions are set out in, *inter alia*, the Royal Proclamation of 1763, the *Constitution Act, 1982*, and various Canadian jurisprudence;

**WHEREAS** the *United Nations Declaration of the Rights of Indigenous Peoples* (the UN Declaration), which the government of Canada has adopted without qualification, and has, alongside the government of BC through the *Declaration on the Rights of Indigenous Peoples Act* (the Declaration Act), committed to implement, affirms:

**Article 8(2):** States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or

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effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration.

**Article 18:** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19:** States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 26(1):** Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

**(2):** Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

**(3):** States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**Article 27:** States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Article 28(1):** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

**(2):** Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

**Article 37(1):** Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

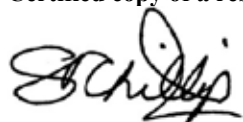
**(2):** Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive agreements;

**WHEREAS** the Declaration Act Action Plan commits the province to implement a distinctions-based approach in its dealings with Indigenous peoples in a manner that acknowledges the specific rights, interests, priorities, and concerns while respecting and acknowledging that First Nations, Métis, and Inuit peoples each have unique cultures, histories, rights, laws, and governments. A distinctions-based approach may require the Province's relationship and engagement with Indigenous peoples to include different approaches or actions and result in different outcomes;

**WHEREAS** a recent pattern of priority engagement with only some First Nations over others by government officials and Executive Council members has become evident, unilaterally deciding to engage with Modern

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Treaty Nations as a distinct group of peoples, First Nations broadly, and key stakeholders in contexts such as heritage conservation, children and families, and others;

**WHEREAS** this approach to engagement is not inclusive, nor distinctions-based in line with the provincial government's obligations and commitments under the UN Declaration Act, the Declaration Act and its Action Plan, and Canadian law;

**WHEREAS** to provide Modern Treaty Nations with a process for consultation and engagement regarding provincial legislative changes without an invitation or proper process for *all* Treaty Nations in BC such as the Douglas Treaty Nations and Treaty 8 First Nations is discriminatory and in violation of the BC Human Rights Code and the UN Declaration;

**WHEREAS** in its legislative reform work, the Province may be prioritizing the rights and interests of Modern Treaty Nations and implementation of the Shared Priorities Framework between the Province and the Alliance of Modern Treaty Nations over other First Nations in BC, including the inherent Title and Rights holders, and other existing Treaties and/or agreements; and

**WHEREAS** a unilateral approach to designing and implementing engagement processes with First Nations is conduct that is not aligned with the UN Declaration and Crown obligations under its own law and commitments towards reconciliation. First Nations in BC, including inherent Title and Rights holders and *all* Treaty Nations must have an opportunity to meaningfully participate in the decision-making process.

**THEREFORE BE IT RESOLVED** the UBCIC Chiefs-in-Assembly call upon the provincial and federal governments to implement an inclusive, distinctions-based approach to engagement with First Nations in BC, specifically in its legislative reform work to align its laws with the UN Declaration;

**THEREFORE BE IT FURTHER RESOLVED** the UBCIC Chiefs-in-Assembly call upon the provincial and federal governments to uphold the honour of the Crown and its obligations to inherent Title and Rights holders in its relationship with First Nations, including those who have not agreed to the renewed BC Treaty Commission process or policies; and

**THEREFORE BE IT FINALLY RESOLVED** the UBCIC Chiefs-in-Assembly direct the UBCIC Executive and staff to advocate for strengthened engagement with First Nations in BC that is inclusive, distinctions-based, and in line with the minimum standards embedded in the UN Declaration while also ensuring that engagement is grounded in the recognition and implementation of Aboriginal Title and Rights, and inherent Title and Rights holders, that can benefit *all* First Nations in BC.

**Moved:** Chief Don Tom, Tsartlip First Nation  
**Seconded:** Kúkpi7 Doug Thomas, Splatshin Band  
**Disposition:** Carried  
**Date:** September 28, 2022

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# First Nations Summit

## RESOLUTION #1022.07

**SUBJECT: DISTINCTIONS-BASED APPROACH TO RECOGNITION AND IMPLEMENTATION OF THE INHERENT RIGHTS OF FIRST NATIONS PEOPLES AND GOVERNMENTS**

### WHEREAS:

- A. The historical actions illegally undertaken by the colonial government of British Columbia and successive governments of Canada have resulted in the dispossession of First Nations, including the illegal alienation of our lands; the failure to protect Indian reserves, villages, hunting, fishing & harvesting areas; the systematic denial of rights to fish and access to water; and the illegal disruption and removal of sacred sites, land use and occupancy structures & areas and grave sites.
- B. These historical losses and the ongoing fallout and harm caused to First Nations are the result of fictional, racist concepts such as *terra nullius* and the *doctrines of discovery, domination and denial* which provided colonial and Canadian governments justification for alienating land through organized systems of pre-emption and land grants to accelerate non-Indigenous settlement on Indigenous lands and territories, and later through systems of land alienation legalized and exploited under the *Indian Act* and often in clear violation of the minimal protections contained in colonial or federal law.
- C. Redress of these historical wrongs is necessary through recognition of the rights of First Nations, including territorial and marine or water rights, and respectful and legally sound processes for resolving conflicts arising from the denial of rights era. Furthermore, Canada's lawful obligation and the honour of the Crown necessitates just action on the part of the federal and provincial governments, that takes into account the key distinctions between First Nations and Metis, and does not lump together Indigenous peoples for the sake of convenience as this is confusing, disrespectful, diminishes the uniqueness of the original First Nations' peoples and recreates further colonial difficulties.
- D. The rights of First Nations, as the territorial rights holders, are distinct from those of the Métis in British Columbia as a matter of law and principle and this has been recognized in jurisprudence, constitutional law and through the application of international human rights and customary law.
- E. The provincial government's relationship and engagement with First Nations, Métis and Inuit peoples will require different approaches to the substance and the process of reconciliation so that it is meaningful, accurate and responds to the distinct circumstances of First Nations, and does not create new rights by extension to those who never had or held such rights.



- F. Grouping all Indigenous peoples together in government policies and approaches, without proper regard for fundamental distinctions between peoples who each have their own unique cultures, histories, rights, territories, laws, and governments, is inappropriate and not consistent with constitutional law or international human rights law, including the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration).
- G. All policy must be based on the recognition that original First Nations were the pre-existing societies using and occupying lands and resources prior to contact and who have inherent Title and Rights and constitutionally protected rights in relation to their lands and resources, and international legal protections in the UN Declaration that require governments recognize and align their work properly with a distinctions-based approach. There must also be recognition that there are distinctions among individual and distinct First Nations, such as those who are inherent Title and Rights holders as well as those who are Treaty and Modern Treaty Nations.
- H. A distinctions-based approach recognizes that Indigenous peoples and their rights are distinct, and all matters engaging lands and resources give rise to legal obligations owing to First Nations, and this must be a priority to resolve colonial conflicts. Furthermore, the Métis are not original First Peoples in British Columbia with a territory or scope of rights in any way equivalent or similar to First Nations. Métis presence in British Columbia occurred after colonization and settlement.
- I. The *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration), which the government of Canada has adopted without qualification, and has, alongside the government of BC, committed to implement, affirms:

**Article 8(2):** States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights; (d) Any form of forced assimilation or integration.

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior, and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 26(1):** Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired;

**(2):** Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired;

**(3):** States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

**PAGE THREE**

**RESOLUTION #1022.07**

**SUBJECT: DISTINCTIONS-BASED APPROACH TO RECOGNITION AND IMPLEMENTATION OF THE INHERENT RIGHTS OF FIRST NATIONS PEOPLES AND GOVERNMENTS**

**Article 27:** States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

**Article 28(1):** Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

**(2):** Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

- J. All governments must explicitly have policies that acknowledge and take into account distinctions through the application of a distinctions-based approach when reviewing or aligning laws, policies and practices with UN Declaration and the rights and interests of diverse and distinct Indigenous peoples, including First Nations in BC, in line with the federal *UN Declaration on the Rights of Indigenous Peoples Act* and the provincial *Declaration on the Rights of Indigenous Peoples Act* which impose an obligation to do so.
- K. Similar resolutions were passed at the UBCIC and BCAFN Annual General Assemblies in September 2022.

**THEREFORE, BE IT RESOLVED:**

- 1. That the First Nations Summit (FNS) Chiefs in Assembly call upon all governments to adopt a distinctions-based approach to ensure the distinct rights, interests, histories, and contexts of original First Nations as the first occupants and owners of their respective territories are recognized, while also ensuring that there is a recognition that First Nations, as territorial rights holders in BC, are distinct from Métis and/or other Indigenous peoples who are visitors to our territories.
- 2. That the FNS Chiefs in Assembly call upon all governments to work with the FNS, working alongside the BC Assembly of First Nations and Union of BC Indian Chiefs, as the First Nations Leadership Council, to co-develop and affirm a distinctions-based approach in all of its work to recognize, affirm, implement and respect the rights of First Nations in BC.
- 3. That the FNS Chiefs in Assembly direct the FNS Executive and staff to seek funding and/or necessary resources to advocate for and assist in the development of a distinctions-based policy to all aspects of action planning on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples at the federal, provincial and municipal levels of government, that is reflective of the distinctions among Indigenous peoples in order to strengthen future state-led policy and law making.



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**RESOLUTION #1022.07**

**SUBJECT: DISTINCTIONS-BASED APPROACH TO RECOGNITION AND IMPLEMENTATION OF  
THE INHERENT RIGHTS OF FIRST NATIONS PEOPLES AND GOVERNMENTS**

**MOVED BY:**

Chief Maureen Chapman, Sq'ewa:lxw First Nation

**SECONDED BY:**

Chief Hank Adam, Stswecem'c Xgat'tem First Nation

**DATED:**

October 20, 2022

Passed by consensus.

**ENDORSED BY:**



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Cheryl Casimer



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Robert Phillips



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Hugh Braker







FIRST NATIONS EDUCATION STEERING COMMITTEE

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